TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 204.

GEORGE L'HOTE AND THE CHURCH EXTENSION SOCIETY OF THE METHODIST EPISCOPAL CHURCH, PLAINTIFFS IN ERROR,

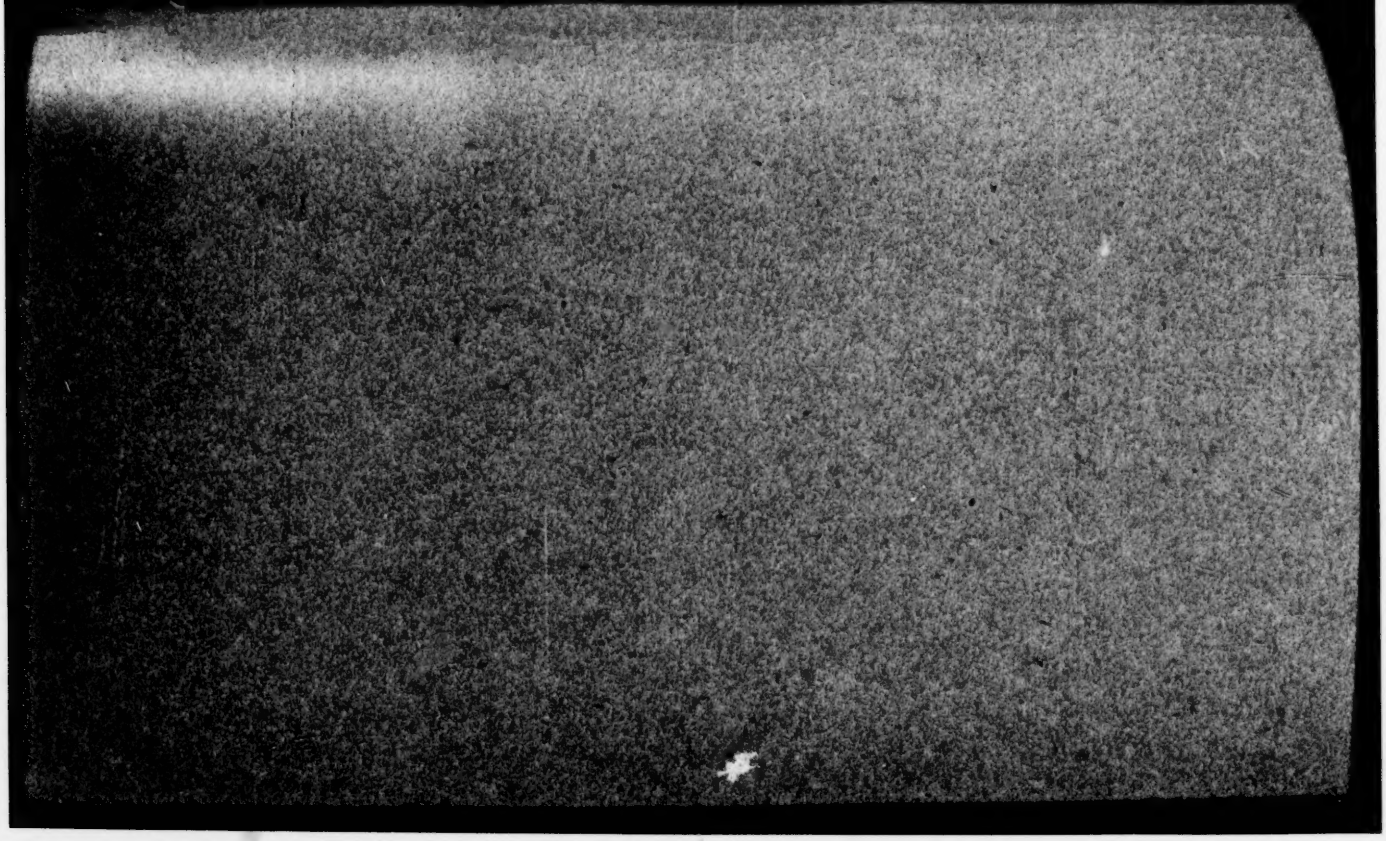
vs.

THE CITY OF NEW ORLEANS ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED FEBRUARY 6, 1899.

(17,290.)



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a UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

GEORGE L'HOTE, Plaintiff in Error,
versus
CITY OF NEW ORLEANS ET ALS., Defendants in Error. } No. 12287.

Messrs. E. Howard McCaleb and Rene C. Metoyer, for plaintiff in error.

Messrs. James J. McLoughlin, assistant city attorney, and Samuel L. Gilmore, city attorney, for The City of New Orleans and Dexter S. Gaster, superintendent of police, defendants in error.

Writ of error to the supreme court of the State of Louisiana from the Supreme Court of the United States of America returnable at the city of Washington, D. C., within thirty (30) days from the ninth (9th) day of January, A. D. 1899.

Transcript of Record.

1 STATE OF LOUISIANA, }
Parish of Orleans, City of New Orleans. }

Civil District Court for the Parish of Orleans.

Appeal from the honorable the civil district court for the parish of Orleans—Honorable Fred D. King, judge—division "B."

Petition of George L'Hote for a Writ of Injunction against the City of New Orleans, through Its Mayor and D. S. Gaster, Superintendent of Police, and Affidavit of George L'Hote Thereon.

Filed September 22nd, 1897.

Civil District Court, Division "B."

GEORGE L'HOTE
vs.
CITY OF NEW ORLEANS ET ALS. } No. 54533.

Hon. Fred D. King, judge.

To the honorable the judges of the civil district court in and for the parish of Orleans:

2 George L'Hote, who resides in the city of New Orleans and a citizen and tax-payer of said city, brings this his action on behalf of himself and on behalf of all other persons similarly situated and interested who may intervene herein to join your petitioner and bear their proportion of costs and expenses, respectfully shows:

That your petitioner is the owner of property situated in the

square bounded by St. Louis, Franklin, Treme, and Toulouse streets, in the 2nd district of this city; that your petitioner resides with his wife and children in said square, at No. 522 Treme street; that the chief and principal way of approach to his residence and for ingress and egress thereto is in and through and from St. Louis street; that the locality in which your petitioner resides is now and has always been used for private residences, schools, groceries, and other mercantile establishments; that the people residing in said locality are now and have always been moral, virtuous, sober, law-abiding, and peaceable; that said locality is not now and never has been dedicated to immoral purposes or used for dwelling places and as the refuse of public prostitutes, lewd and abandoned women and the necessary attendants thereof, drunkards, idle, vicious, and disorderly persons, who gather around them to gratify their depraved appetites and who are regarded as dangerous to the peace and welfare of the community, their presence at any place being always a just cause of alarm and apprehension.

Now, your petitioner avers that the common council of the city of New Orleans, unmindful of their duty to protect the public morals and preserve the peace of said city, did, on the 6th day of July, A. D. 1897, enact a certain ordinance, known as No. 13485,
3 council series, amending section 1 of ordinance 13032, council series, by which it is provided:

"That from and after the first of October, 1897, it shall be unlawful for any public prostitute or women notoriously abandoned to lewdness, to occupy, inhabit, live or sleep in any house, room or closet, situated within the following limits viz:

1st. From the south side of Custom-house street to the north side of St. Louis street, and from the lower or wood side of North Basin street to the lower or wood side of Robertson street;

2nd. And from the upper side of Perdido street to the lower side of Gravier street, and from the river side of Franklin street to the lower or wood side of Locust street, provided that nothing herein shall be construed as to authorize any lewd woman to occupy a house, room or closet in any portion of the city.

Be it further ordained that section 1, of ordinance 13032 C. S. as amended above be and the same is hereby re-enacted."

That said ordinance was approved by A. Brittin, acting mayor; all of which will more fully appear by said ordinance itself, together with a copy of ordinance No. 13032, council series, of which it is an amendment, both herewith filed for greater certainty and made part of this petition, marked Exhibits "A" and "B."

That D. S. Gaster, superintendent of police, has given notice of his intention to strictly enforce said ordinance on or after the 1st of October, 1897.

Now, your petitioner avers that said ordinances are unconstitutional, illegal, unreasonable, and oppressive and will, if executed, work irreparable injury, wrong, and damage to him.

That the said council in enacting said ordinances pretend
4 to have acted under and by virtue of the power conferred upon them "to regulate the police of houses of prostitution

and assignation and to close such houses in certain limits, and shall have the power to exclude the same, and to authorize the mayor and police to close said places," as contained in section 15 of act #45, approved July 7th, 1896.

Now, your petitioner avers that the enforcement of said ordinances in the manner provided therein violates the provisions of the Constitution of the United States and of this State, in that they deprive petitioner of his property without due process of law and amount to a taking or damaging the property of petitioner for public purposes without just and adequate compensation being first paid.

That the introduction of public prostitutes, women notoriously abandoned to lewdness, in said locality, authorizing them to occupy, inhabit, live, and sleep in houses and rooms situated therein, will materially lessen and depreciate the value of your petitioner's property, render his dwelling and the dwelling of his neighbors similarly situated unfit for the occupancy of private families, destroy the morals, peace, and good order of the neighborhood, drive out and turn away the law-abiding, virtuous citizens and their families from said locality, and dedicate the same to public and private nuisances *per se*, contrary to law and good morals.

That the common council of the city of New Orleans had previously designated the limits within which prostitutes and women notoriously abandoned to lewdness should inhabit and live, and had thereby exhausted whatever power was vested in them by legislature of the State and were without legal right to alter, change, or modify the same to the injury, detriment, and damage of your petitioner and others residing in said locality, which said council have attempted to include within said limits; that, having so exhausted the authority conferred upon them by the legislature, the said council was without power to capriciously change the limits previously established by them; that the avocation- plied by public prostitutes and women notoriously abandoned to lewdness are *centra bonos mores*, and the said common council of the city of New Orleans have no right, power, or authority to legalize the same and to permit such persons to reside in the said vicinity in which your petitioner and others dwell with their families.

That there was no good and sufficient reason for the enactment of said ordinance or the changing of the limits previously existing and established.

That said council, in enacting said ordinance No. 13485, council series, eliminated and excluded a large area of the city which had been previously dedicated to the occupancy of lewd and abandoned women, to the detriment and injury of petitioner, by changing said limits so as to include St. Louis street in his locality.

That said ordinances are illegal, unreasonable, and oppressive, in that, if executed, they will render your petitioner's dwelling-house and those of his neighbors unfit and unsuitable for the occupancy of their families, wives, and children and wholly valueless for the purposes for which they were constructed and have heretofore been used.

That your petitioner and others similarly situated will be com-

pelled, if said ordinances are executed, to abandon and re-
6 move from their dwellings at great trouble, expense, and annoyances, and the enforcement of said ordinances would oppress, injure, and seriously damage and incommode your petitioner, and also all others similarly situated.

Now, your petitioner avers that said ordinances, if executed, would deprive your petitioner (and others similarly situated) of the equal protection of the laws and would be in violation of the Constitution and laws of the United States as well as of this State; that under the laws and ordinances of the city of New Orleans as they exist your petitioner and all others similarly situated in said locality have the right to cause houses of prostitution and assignation to be suppressed as nuisances *per se*, the inmates arrested and forced to vacate and remove therefrom, and of which right petitioner has heretofore availed himself; that said ordinances herein complained of attempt to legalize said nuisance *per se* and to take away the rights of citizens heretofore existing and vested in your petitioner and others residing in said locality.

That the enforcement of said ordinances will work your petitioner irreparable injury and damage him in the sum of five thousand dollars ($5,000) in the depreciation in value of his property, it ceasing to be a fit and proper place for the dwelling-house of himself, his wife and children, and necessitating their abandonment of the same and removal from said locality.

That said ordinances should be declared unconstitutional, illegal, unreasonable, oppressive, and, as such, null, void, and without any force, validity, or effect whatsoever.

Wherefore petitioner prays, the annexed bond and affidavit considered, that a writ of injunction do issue herein, directed to
7 The City of New Orleans, through its mayor and D. S. Gaster, superintendent of police, enjoining, restraining, and prohibiting said city, its officers, agents, representatives, and employees, and the said superintendent of police, and each of them, from in any manner enforcing or attempting to enforce said ordinances No. 13032, council series, as amended by section 1 of ordinance No. 13485, council series; that said City of New Orleans, through its mayor, and D. S. Gaster, superintendent of police, be severally cited to appear and answer this petition, and, after due proceedings, said injunction be maintained and perpetuated and said ordinances be declared unconstitutional, illegal, unreasonable, and, as such, null, void, and without any legal force, validity, or effect whatsoever.

And petitioner prays for all costs & for general and equitable relief, and, as in duty bound, he will ever continue to pray.

(Signed) E. HOWARD McCALEB,
" E. HOWARD McCALEB, JR.,
Attorney- for Petitioner.

Affidavit of George L'Hote.

George L'Hote, being duly sworn, deposes and says:
That the facts alleged in the foregoing petition are true and correct.

(Signed) GEORGE L'HOTE.

Sworn and subscribed before me this 20th day of September, A. D. 1897.

(Signed) ARTHUR B. LEOPOLD,
[SEAL.] *Notary Public.*

8 *Ordinance No.* 13485, *Council Series, Marked "Exhibit A," Annexed to and Made Part of Petition.*

Filed September 22nd, 1897.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *July* 7, 1897.

No. 13485, council series.

Be it ordained by the common council of the city of New Orleans—

That section 1, of ordinance 13032, C. S., be and the same is hereby amended as follows from and after the first of October, 1897, it shall be unlawful for any public prostitute or woman notoriously abandoned to lewdness to occupy, inhabit, live, or sleep in any house, room or closet situated without the following limits viz:

1st. From the south side of Custom-house street to the north side of St. Louis street, and from the lower or wood side of North Basin street to the lower or wood side of Robertson street;

2nd. And from the upper side of Perdido street to the lower side of Gravier street, and from the river side of Franklin street to the lower or wood side of Locust street, provided that nothing herein shall be so construed as to authorize any lewd woman to occupy a house, room, or closet in any portion of the city.

Be it further ordained, That sec. 1, of ordinance 13032, C. S., as amended above be and the same is hereby re-enacted.

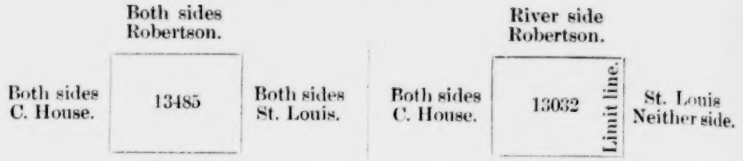
Adopted by the council of the city of New Orleans, July 6th, 1897.

W. R. BRASHEAR,
Clerk of Council.

9 Approved July 7, 1897.

A. BRITTIN,
Act'y Mayor.

A true copy.
T. H. THORPE,
Secretary to the Mayor.



Ordinance No. 13032, *Council Series, Marked "Exhibit B," Annexed to and Made Part of Petition.*

Filed September 22nd, 1897.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *January 29th*, 1897.

No. 13032, council series.

SECTION 1. Be it ordained by the common council of the city of New Orleans, That from the first of October, 1897, it shall be unlawful for any public prostitute or woman notoriously abandoned to lewdness to occupy, inhabit, live, or sleep in any house, room or closet situated without the following limits: South side of Custom-house street from Basin to Robertson street, east side of Robertson street from Custom-house to St. Louis street, south side of St. Louis street from Robertson to Basin street.

Provided, that no lewd woman shall be permitted to occupy a house, room or closet on St. Louis street. Provided further, that nothing herein shall be so construed as to authorize any lewd woman to occupy a house, room or closet in any portion of the city.

SECTION 2. That it shall be unlawful for any person or persons, whether agent or owner to rent, lease or hire any house, building or room to any woman or girl notoriously abandoned to lewdness or for immoral purposes outside the limits specified in section 1 of this ordinance.

SECTION 3. That public prostitutes or notoriously lewd and abandoned women are forbidden to stand upon the sidewalks in front of or near the premises they may occupy, or at the alleyway, door or gate of such premises or to occupy the steps thereof, or to accost, call or stop any person passing by or to walk up and down the sidewalks, or to stroll about the city streets indecently attired, or in other respects so as to behave in public as to occasion scandal, or disturb and offend the peace and good morals of the people.

SECTION 4. That it shall not be lawful for any lewd women to frequent any cabaret or coffee-house or bar-room and to drink therein.

SECTION 5. That it shall be unlawful for any party or parties to establish or carry on a house of prostitution, or assignation without the limits specified in section, of this ordinance.

SECTION 6. That wherever a house of prostitution or assignation within or without the limits established by this ordinance, may become dangerous to public morals, either from the manner in which it is conducted or the character of the neighborhood in which it is situated, the mayor may, on such facts coming to his
11 knowledge order the occupant- of such house, building or room, to remove therefrom within a delay of five days, by service of notice on such occupants in person, or by posting the notice on the door of the house, building, or room to remove therefrom within a delay of five days, and upon such occupants failing to do so each shall be punished as provided in section — of this ordinance.

SECTION 7. That in the event that the occupants of such house building or room referred to in section 6, do not remove therefrom after the infliction of the penalty the mayor is authorized to close the same and to place a policeman at the door of such premises to warn away all such parties who shall undertake to enter.

SECTION 8. That any person or persons who shall violate the provisions of this ordinance, or who shall disturb the tranquil-ity of the neighborhood or commit a breach of the peace, shall be punished by the recorde" having jurisdiction, for the first offence by a fine not exceeding $5.00, and in default of payment by imprisonment not exceeding ten days, for the second offence by a fine not exceeding $10.00 and in default of payment by imprisonment not exceeding twenty days and for any subsequent offence by a fine not exceeding $25 and in default of payment by imprisonment not exceeding 30 days.

SECTION 9. That each day any person or persons shall continue to violate the provisions of this ordinance shall constitute a separate offence.

SECTION 10. That on and from the day this ordinance takes effect all ordinances in conflict therewith be and the same are hereby repealed—provided that nothing herein contained shall affect ordinance 12456, C. S., relative to prostitutes in the fifth district.

12 Adopted by the council of the city of New Orleans, January 29th, 1897.

W. R. BRASHEAR,
Clerk of Council.

Approved Jan'y 29th, 1897.

W. C. FLOWER, *Mayor.*

A true copy.
T. H. THORPE,
Secretary to the Mayor.

Bond for Injunction, Annexed to and Made Part of Petition.

Filed September 22nd, 1897.

Civil District Court, Division "B."

GEORGE L'HOTE
vs.
CITY OF NEW ORLEANS ET ALS. } No. 54533.

Know all men by these presents that we, George L'Hote, as principal, and J. C. Aleix, both of the city of New Orleans, as security, of the city of New Orleans and State of Louisiana, are held and firmly bound unto the City of New Orleans and D. S. Gaster, supt. of police, in the sum of five hundred ($500.00) dollars, lawful money of the United States of America, to be paid to said defendants, their successors, heirs, executors, administrators, and assigns; for which payments, well and truly to be made, we bind ourselves and each of us by himself, and each of our heirs, executors, administrators, firmly by these presents.

Sealed with our seal- and dated 22nd day of September, in the year of our Lord 1897.

13 Whereas the said George L'Hote has this day presented a petition to the honorable the civil district court for the parish of Orleans praying for a writ of injunction to issue against the City of N. O. and D. S. Gaster, supt. of police:

Now, the condition of the above obligation is that we, the above-bound George L'Hote and J. C. Aleix, will well and truly pay to the said City of New Orleans and D. S. Gaster, supt. of police, the defendants in said injunction, all such damages as the defendants or either of them may recover against us in case it should be decided that the injunction was wrongfully obtained.

(Signed) GEORGE L'HOTE. [SEAL.]
" J. C. ALEIX. [SEAL.]

Signed, sealed, and delivered in the presence of—

—— ——.

Order of Court on Writ of Injunction.

Let a writ of injunction issue herein as prayed for and according to law upon petitioner giving bond in the sum of $500, five hundred dollars.

N. O., Sept. 22nd, 1897.

(Signed) F. A. MONROE,
Judge of This Court, Div. C, Acting for the Hon. F. D. King, Judge Div. B, Now Absent.

Exceptions of Defendants.

Filed September 27th, 1897.

Civil District Court, Division "B."

GEORGE L'HOTE
vs.
CITY OF NEW ORLEANS ET ALS. } No. 54533.

14 Now into court comes The City of New Orleans, defendant herein, by Walter C. Flower, mayor, and Dexter S. Gaster, supt. of police, also defendant herein, and plead that this court is without jurisdiction herein *ratione materiæ*.

And in the event that this plea to the jurisdiction should be overruled, but not otherwise expressly reserving the benefit of said plea, then, and in that event, defendants plead that plaintiff's petition discloses no cause of action.

Wherefore defendants pray that these exceptions be maintained and this suit dismissed at plaintiff's cost and for general relief.

(Signed) JAMES J. McLAUGHLIN,
Ass't City Attorney.

Motion to Fix Exceptions for Trial.

Filed November 11th, 1897, and Entered on Minutes of Same Date.

Civil District Court, Division "B."

GEORGE L'HOTE
vs.
CITY OF NEW ORLEANS ET ALS. } No. 54533.

On joint motion of James J. McLaughlin, assistant city attorney, and E. H. McCaleb, attorney for plaintiff—

It is ordered that the exceptions filed herein by the defendants be fixed for trial on Monday, November 15th, 1897, at 11 o'clock a. m.

Petition of Intervention of B. G. Carbajal and Order of Court Thereon.

Filed November 11th, 1897.

15 Civil District Court, Division "B."

GEORGE L'HOTE
vs.
CITY OF NEW ORLEANS ET ALS. } No. 54533.

To the Honorable Fred D. King, judge of said court:

The petition of Bernardo Gonzales Carbajal, who resides in the city of New Orleans, herein appearing and intervening in this case for his own interest and on his own behalf, respectfully shows—

That your petitioner is the true and lawful owner of the follow ng-described property, viz:

Two certain lots of ground, together with all the buildings and improvements thereon, situate in the 2nd district of this city, in the square designated by the municipal number 159, and bounded by Bienville, Marais, Custom-house, and Villere Sts. Said lots are designated by the Nos. two and three on a sketch by D. E. Seghers, surveyor, dated the 22nd day of August, 1892, hereto annexed for reference, according to which sketch said lots adjoin each and measure as follows, to wit:

Lot No. 2, being the second half lot from the corner of Villere street, measures in American or English measure 31 feet 11 inches and five lines front on Bienville street by a depth of 95 feet and 11 inches, and said lot No. — is the third from the corner of Villere street and measures in French measure thirty feet front on Bienville street by a depth of 139 ft. and 8 inches, which in American measure is equal to 31 ft. 11 inches and 5 lines front on Bienville street by a depth of 148 ft. 10 inches and 1 line, being the same property which was purchased by intervenor from M. J.
16 George Eugene de Forceville, as per act passed before G. Le Gardeur, Jr., notary public, on the 27th of August, 1892, duly registered in Conveyance Office Book 145, folio 332.

That there are dwelling-houses erected on said property and which petitioner has rented as private residences since the time of his purchase; that the residence No. 1522 Bienville street is rented by petitioner to Edward J. Dumoile, and occupied by him and his family, who pays a monthly rental to your petitioner of seventeen dollars; the residence No. 1524 Bienville St. adjoining is rented by petitioner to Joseph Page, and occupied by him and his family as a private residence, who pays a monthly rental to your petitioner of seventeen dollars therefor, and the dwelling No. 1526 Bienville street adjoining is rented by petitioner to and is occupied by Alexander Scott and his family, who pays a monthly rental of sixteen dollars therefor to your petitioner, and the dwelling No. 1528 Bienville street adjoining is rented by petitioner to Arnold Dufauchard and occupied by him and his family as a residence and who pays a monthly rental of $16.00 therefor to your petitioner, making a total of sixty-six dollars received by your petitioner for the rental of said property, amounting to an annual rental of seven hundred and ninety-two — ($792) therefor.

Your inte-venor reiterates and reavers all the allegations contained in the original petition of George L'Hote herein filed, in so far as the aforesaid property owned by him and occupied by his tenants *are* concerned; that the aforesaid property belonging to inte-venor is comprised within the limits prescribed by ordinances Nos. 13032 and 13485, council series, fully set forth and referred to in plaintiff's petition herein filed, but not within the limits previously designated by the ordinances of the city of New Orleans.

17 That the enforcement of said ordinances referred to in plaintiff's petition will work irreparable and great injury unto intervenor and depreciate his said property by rendering it

unfit and unsuited for dwelling-houses and the occupancy for petitioner's tenants in the full sum of two thousand dollars.

That said ordinances violate the provisions of the Constitution of the United States, and also the constitution and laws of this State; that said ordinances should be declared unconstitutional, illegal, unreasonable, oppressive, and as such null, void, and without any force, validity, or effect whatsoever.

Wherefore intervenor prays that this intervention be filed; that a copy of this petition of intervention be served upon the City of New Orleans through its mayor and D. S. Gaster, superintendent of police, and, after due proceedings, there be judgment rendered in favor of intervenor and against said defendants and each of them, maintaining and perpetuating the injunction herein issued, and that said ordinances Nos. 13032 and 13485, council series, be declared unconstitutional, illegal, unreasonable, oppressive, and as such null, void, and without any legal force, validity, or effect whatsoever.

And for costs and general and equitable relief.

(Signed) E. HOWARD McCALEB,
Attorney for Intervenor.

Order.

Let this petition of intervention be filed as within prayed for and according to law.

New Orleans, November 11th, 1897.

(Signed) FRED D. KING, *Judge.*

18 *Petition of Intervention of the Church Extension Society of the Methodist Episcopal Church.*

Filed November 15th, 1897.

Civil District Court, Division "B."

GEORGE L'HOTE
vs.
CITY OF NEW ORLEANS ET ALS. } No. 54533.

To the Honorable Fred D. King, judge of said court:

The petition of intervention of the Church Extention Society of the Methodist Episcopal Church, a corporation duly chartered and organized under the laws of the State of Pennsylvania, herein represented by L. G. Adkinson, chairman of the local board of the Church Extention Society, and Rev. Henry Taylor, pastor of said church, intervening herein for its own interest, respectfully shows—

That it is the owner of two certain lots of ground, with the buildings and improvements thereon, situated in the second district of this city, in the square bounded by Bienville, Custom-house, Marais, and Villere streets, having a frontage of fifty-two feet on Bienville street, and upon which is erected a building two stories high, which said building is used and occupied for church purposes; that a re-

ligious congregation, known as the "Union Chapel" of the Methodist Episcopal Church, assembles and worships therein on each and every Sabbath and on Tuesday and Friday evening, as well as on other stated occasions; that besides the religious services conducted in said church a Sunday school is organized and established, which is attended by one hundred and seventy children, who receive religious instructions and teachings; that the membership of
19 this congregation consists of about three hundred persons, and the congregation worshipping in said church number about six hundred persons.

Intervenor avers that said property and the church erected thereon, above mentioned, is included within the limits prescribed by ordinances Nos. 13032 and 13485, council series, fully set forth and referred to in plaintiff's petition herein filed, but not within the limits previously designated by the ordinances of the city of New Orleans.

Intervenor alleges that the property owned by it is fully worth the sum of ten thousand dollars.

Now, intervenor, reiterating and reaver-ing all the allegations in plaintiff's petition contained, alleges that if said ordinances are enforced, the value of its property would be destroyed, and the same would be wholly unfit for the purpose for which it was erected and for which it is now being used, enjoyed, and occupied; that the threats to enforce said ordinances has already caused a portion of the congregation attending said church to cease their attendance therein.

That, encouraged by the action of the city council of the city of New Orleans in passing said ordinances, a number of lewd and abandoned women have already taken up their abode and habitation within the vicinity of said church, and are plying their vocation as prostitutes, and a number of houses are now in progress of erection and construction intended to be used and occupied as brothels and houses of prostitution, and other places have been leased and let for the purpose of carrying on liquor saloons and concert halls for the purpose and with the intent of changing
20 the hitherto respectable character of said neighborhood into a resort for vice and the establishment of nuisances *mala in se*.

Intervenor avers that said ordinances violate the provisions of the Constitution of the United States, and also the constitution and laws of this State.

That the common council of the city of New Orleans, under pretext of asserting its police power, has no right to destroy the value of intervenor's property and render the neighborhood in which the same is located the resort of lewd and abandoned women.

That the enforcement of said ordinances will work irreparable injury and damage to intervenor, and damage it fully in the sum of five thousand dollars in the depreciation of its property, it ceasing to be a fit and proper place for a church and Sunday school, disturbing and dispersing the congregation worshipping therein.

That said ordinances should be declared unconstitutional, illegal,

unreasonable, oppressive, and as such null, void, and without any force, validity, or effect whatsoever.

Wherefore intervenor prays that this intervention be filed; that a copy of this petition of intervention be served upon the City of New Orleans, through its mayor, and D. S. Gaster, superintendent of police, and after due proceedings there be judgment rendered in favor of intervenor and against said defendants and each of them, maintaining and perpetuating the injunctions herein issued, and that the said ordinances Nos. 13032 and 13485, council series, be declared unconstitutional, illegal, unreasonable, oppressive, and as such null, void, and without any legal force, validity, or effect whatsoever.

And for costs and general and equitable relief.

21 (Signed) RENE C. METOYER,
Attorney for Intervenor.

Nov. 15, '97.

Service accepted; all rights reserved.

(Signed) JAMES J. McLAUGHLIN,
Ass't City Att'y.

Order.

Let this petition of intervention be filed as within prayed for and according to law.

New Orleans, November 15th, 1897.

(Signed) FRED D. KING, *Judge.*

Exceptions Continued to November 16th, 1897.

Extract from Minutes of Division "B," Monday, November 15th, 1897.

Present: Hon. Fred D. King, judge.

Civil District Court, Division "B."

GEORGE L'HOTE
vs.
CITY OF NEW ORLEANS ET ALS. } No. 54533.

The exceptions herein filed by defendants to the petitions of plaintiff and intervenors came on this day for trial.

Present: E. Howard McCaleb, Esq., and E. H. McCaleb, Jr., Esq., attorneys for plaintiff and intervenor.

Rene Metoyer, Esq., attorney for intervenor.

Jas. J. McLaughlin, Esq., assistant city attorney, for defendants and exceptors.

22 When, after hearing pleadings and argument of counsel up to the hour for adjournment, the said exceptions *was* continued for further argument to Tuesday, November 16th, 1897, at 11 o'clock a. m.

Exceptions Submitted.

Extract from Minutes of Division "B," Tuesday, November 16th, 1897.

Present: Honorable Fred D. King, judge.

Civil District Court, Division "B."

GEORGE L'HOTE
vs.
CITY OF NEW ORLEANS ET ALS. } No. 54533.

The exceptions herein filed by defendants to the petitions of plaintiff and intervenors came on this day for further argument.

Present: E. Howard McCaleb, Esq., and E. H. McCaleb, Jr., Esq., attorneys for plaintiff and intervenor.

Rene Metoyer, Esq., for intervenor.

Jas. J. McLaughlin, Esq., assistant city attorney, for defendants and exceptors.

When, after hearing arguments of counsel, the said exceptions were taken under advisement.

Exceptions Overruled.

Extract from Minutes of Division "B," Friday, November 19th, 1897.

Present: Hon. Fred D. King, judge.

Civil District Court, Division "B."

GEORGE L'HOTE
vs.
CITY OF NEW ORLEANS ET ALS. } No. 54533.

23 The exceptions herein filed by defendants to the petitions of plaintiff and intervenors having been submitted to the court, and the court considering the law applicable thereto, and for the reasons assigned in the written opinion of the court this day delivered and filed—

It is ordered that said exceptions be overruled.

Answer of the City of New Orleans and Chief of Police.

Filed November 29th, 1897.

Civil District Court, Division "B."

GEORGE L'HOTE
vs.
CITY OF NEW ORLEANS ET ALS. } No. 54533.

Now into court come defendants herein, and, first reserving the benefit of the exception heretofore filed by them and in no way waiving same, deny all and singular the allegations contained in the original petition of George L'Hote, filed herein, and in the

petition of intervention filed herein by the Church Extension Society of the Methodist Episcopal Church, and also in the petition of intervention filed herein by Bernardo Gonzales Carbajal, except as may be hereinafter admitted.

Defendants aver that the ordinances #13032, C. S., and #13485, C. S., are legal, and their enactment and enforcement are a lawful exercise of the police power conferred upon the city of New Orleans, and especially are a valid exercise of the power conferred upon the city of New Orleans by section — of act #45 of 1896.

Wherefore defendants pray that the demand of the plaintiff and intervenors be rejected, and this suit be dismissed at their
24 cost, and for general relief.

(Signed) JAMES J. McLAUGHLIN,
Ass't City Att'y.

Continued to December 21st, 1897.

Extract from Minutes of Division "B," Thursday, December 16th, 1897.

Present: Hon. Fred D. King, judge.

Civil District Court, Division "B."

GEORGE L'HOTE
vs.
CITY OF NEW ORLEANS. } No. 54533.

Continued to Tuesday, December 21st, 1897.

Civil District Court, Division B.

GEORGE L'HOTE
vs.
CITY OF NEW ORLEANS. } No. 54533.

Testimony on Behalf of Plaintiff, Taken in Open Court, Hon. Fred D. King Presiding, on Wednesday, December 21st, 1897.

Appearances: E. Howard McCaleb, Esq., for plaintiff and for B. G. Carbajal, intervenor; R. C. Metoyer, for the Union Methodist Episcopal Church; J. J. McLaughlin, Esq., for the City of New Orleans, defendant.

25 Witnesses:

Geo. L'Hote,	p. 26 & 168.
Sergt. Thomas Capau,	" 48.
Stephen Duncan,	" 53.
Louis Cuculu,	" 61.
John St. Paul,	" 74.
Pierre Peret,	" 77.
B. G. Carbajal,	" 82.
C. P. Guichard,	" 90.
F. Callico,	" 95.
Henry Taylor,	" 99 & 167.
Steve Ciolina,	" 109 & 169.
R. C. Metoyer,	" 123.

By Mr. McCaleb: I offer in evidence a certified copy of the act of sale from Paul Duchien to George L'Hote, passed before John Bendernagel, notary public, on the 15th of January, 1886, registered in the Conveyance Office Book 122, folio 761. Marked "P 1."

Admission.

It is admitted that the plaintiff is the owner of the property described in his petition, and the plaintiff is dispensed from filing his title in evidence.

And the same admission is made in relation to the ownership of the property described in the petitions of intervention of B. G. Carbajal and the Union Methodist Episcopal Church.

And it is agreed by both sides that the various city ordinances relative to lewd women and the limits for lewd women, as set forth in Leovy's City Laws and Ordinances, Jewell's Digest
26 of City Laws and Ordinances, and Flynn's Digest of City Laws and Ordinances, and in any other official publications, are offered in evidence and may be used by either side without being filed in the record, and in case of appeal the same are not to be written in the transcript, but shall be used in the original in the supreme court as contained in said publication.

George L'Hote, plaintiff, sworn on his own behalf and on behalf of intervenors.

Direct examination.

By Mr. McCaleb:

Q. Mr. L'Hote, where do you reside?

A. I reside at No. 520 Treme, or North Liberty, as it is called now.

Q. Treme or North Liberty, 522?

A. No, sir; 520.

Q. 520?

A. Yes, sir.

Q. In what square and by what streets is the square bounded in which your residence is situated?

A. It is bounded, facing Treme, by Franklin, St. Louis, and Toulouse, square 132, I believe.

Q. Is that your family residence?

A. Yes, sir.

Q. What members of your family reside there with you?

A. My wife and eight children.

Q. How long have you lived there, Mr. L'Hote?

A. I have lived there for sixteen years. I was born next door.

Q. What is the chief and principal way of approach to your
27 residence for ingress and egress?

A. By way of St. Louis street, on account of its being the only straight street from Treme to Rampart street, Toulouse street being cut off by the head of the basin.

Q. For what purposes has the locality in which you reside been used?

A. The locality is used principally by my manufacturing establishment, the firm of L'Hote and Company. There are groceries on the corner; they are at the corner, on St. Louis street. On the square bounded by St. Louis, Conti, Treme, and Basin there is a cemetery. The houses in the neighborhood are occupied by working people—the working class. My next-door neighbor is Mr. Menetre and Mrs. Norman; on the other side the house is occupied by Judge Gastinel's family, Mrs. Dejean; right opposite lives Mrs. Gainnie—that is, in the immediate neighborhood opposite, going towards Rampart street.

Q. Now, Mr. L'Hote, what is the character of the people residing in your locality as to morality, virtue, sobriety, and peaceableness, peacefulness?

A. It is good, sir.

Q. Has said locality ever been dedicated to immoral purposes or used for the dwelling places and for the refuge of public prostitutes?

A. The locality under the old ordinance—St. Louis street was always considered eliminated from that class of people. Immediately in my neighborhood and upon St. Louis street, between Treme and Franklin, up to Rampart street, including the corner of Basin street, the people that have lived there have always been re-
28 spectable, because whenever that neighborhood was invaded by people that were not respectable, and the moment it was noticed, I had them immediately removed by affidavit or otherwise.

Q. Before the recorder?

A. Before the recorder.

By Mr. McCaleb: I now offer in evidence the ordinance known as number 13485, C. S., and ordinance number 13032, C. S., marked "Exhibits A and B."

I also offer in evidence the notice annexed to the petition from the chief of police and the ordinance appended thereto.

It is admitted that the document offered was a notice that was given and served upon lewd women residing in the old limits.

By Mr. McCaleb: I also offer in evidence the city charter of the city of New Orleans, contained in the acts of the legislature of 1896, especially section 15 of the said act No. 45, approved July 7th, 1896.

And it is agreed that this charter may be read and used in evidence, without being filed, from the printed acts of the legislature of the year 1896, and in case of appeal the same shall not be copied in the transcript.

Q. Now, Mr. L'Hote, if these new limits were established and opened to lewd women, what effect would it have upon your property and the property in your vicinage for residential purposes?

A. For that purpose, sir, it would be entirely destroyed, and become a—it would be entirely destroyed, and no respectable family

could remain in that neighborhood, for the simple reason
29 that any locality inhabited by those women—the disturbance and general condition of things—that the streets are impassable by any respectable person.

Q. Mr. L'Hote, do you know how long the old limits of this city have been used and occupied by women of this character?

A. How long?

Q. Yes, sir.

A. Which limits, Judge?

Q. The old limits of the city where they are now—in Dauphine street, Burgundy street, Custom-house street——

A. Well, as long as I know myself—that is, they were scattered all over wherever they were not objected to. Wherever they weren't objected to they have lived three or four in a block, and they would take to the next block, and you would find three or four there—in fact, they would invade every street.

Q. Now, could you remain there with your wife and children if this ordinance was enforced?

A. No, sir.

Q. Do I understand you to say that you have always had these people arrested and removed whenever you heard of them in your neighborhood?

A. Whenever I heard of them in the neighborhood or in any manner was informed that there was any in the neighborhood, I immediately posted myself and either had the commanding officer of the precinct to make an affidavit, and in other instances I did it myself, to have them removed.

Q. Now, Mr. L'Hote, I understood you to say that your dwelling-house was near your lumber factory?

30 A. My manufacturing establishment.

Q. Your manufacturing establishment?

A. Yes, sir.

Q. It is one of the largest manufacturing establishments in the city, is it not?

A. Yes, sir.

Q. Now, what depreciation in your property, if any, would the enforcement of this ordinance under these new limits—what depreciation would it cause in your residence?

A. Well, it would be of no value whatever for residential purposes—in fact, the only thing that could be done with it would be to tear it down and use it to form part of the lumber yard.

Q. Well, we have alleged here that you would be damaged five thousand dollars in the depreciation in the value of this property. Is that averment true?

A. Yes, sir; because the depreciation would be not only on that particular property, but it would be on the whole particular property surrounding, and then the moral condition of that neighborhood at present is good. The men that are employed in my factory and in that neighborhood are quiet and have nothing to disturb them, and people of that kind coming in a neighborhood where people are working from morning till night to a general extent

practically breaks up the manner of those people in living and prevents them from giving the proper attention to their work, and is of incalculable damage to anybody that is doing business in a neighborhood of that kind.

31 Q. Mr. L'Hote, these new limits, as I understand, extend from including Custom-house street to St. Louis and from Basin street back to Robertson?

A. Yes, sir; to Robertson.

Q. Inclusive. Now, is that area and the character of the buildings in that area sufficient to accom-odate all this class of persons?

By Mr. McLAUGHLIN: Well, Mr. McCaleb, that is only a matter of opinion.

By Mr. McCALEB: Well, of course.

By Mr. McLAUGHLIN: If it goes in, I would ask that it go in that way.

By the COURT: The objection goes to the effect to be given to the testimony and not to its admissibility.

By Mr. McCALEB:

Q. Go on, Mr. L'Hote.

A. That territory is composed almost in its entirety of small cottages—one-story houses—and in my opinion, unless every one of these houses were occupied by these women, the limits would not be sufficient; the territory would not be sufficient.

Q. Now, Mr. L'Hote, there is a city ordinance that prevents this class of women from occupying one-story houses?

A. Yes, sir.

Q. You remember that fact?

A. Yes, sir.

32 Q. You have been a member of the city council, I believe?

A. I have, sir.

Q. Then you say that there are not near a sufficient number of houses more than one story high in that area sufficient to accom-odate the women of this class in the city of New Orleans?

A. In my opinion, the deficit would be three-fourths—in other words, there is barely one-fourth enough houses to hold the women in that territory right now.

Q. Mr. L'Hote, how many car lines run through these new limits now—the street-car lines?

A. The Spanish Fort starts from Basin street, runs down to Bienville and on out Bienville. Then the Villere Street line has a double track on Villere street—the Traction Company. That is all.

Q. Are there a large number of persons who are daily transported to and fro on these roads?

A. Very large quantities in these street cars—women and children.

Q. Do you know of any school-house attended by children located within those limits, the new limits?

A. There is a school-house at the corner of Robertson and Bienville, right within the locality, and a school-house situated corner of Rampart—that is, on Rampart between St. Louis and Toulouse is a school-house which is frequented by all the children coming from the back of the fourth and fifth ward, and the only street that they can use to come to that school is St. Louis street.

Q. Do you know of any church in that locality?

33 A. There is a colored church—dedicated to colored people—a colored church on Bienville between Marais and Villere; a very large church.

Q. Now, prior to the passage of this ordinance within the limits which I have designated between Custom-house and St. Louis and Basin and Robertson, inclusive——

A. Yes, sir.

Q. What were the character of the people who lived within those limits?

A. The character was——

Q. The general character?

A. The character was mixed; in other words, you would find in a square maybe eight or ten respectable families living in that square and maybe one suspicious house; in the next square you might find more, but, as I said, those women were not being particularly controlled to any neighborhood; they were all over the city; they were wherever they would find a suitable house, and, not being disturbed, they would remain there.

Q. How many cemet-ries are there in that locality that I have mentioned—within those limits?

A. Well, there are four cemet-ries.

Q. Four cemet-ries? Are those cemet-ries used for the interment of the dead?

A. They are.

Q. How long have they been so used to your knowledge? (The Judge, I expect, in this case would permit the use of hearsay evidence.)

34 A. The cemetery situated on Basin street, bounded by Treme, St. Louis, and Conti street, is considered the oldest cemetery in New Orleans; that would date back over one hundred years—to the last century. The other three have been there, I suppose, for over fifty years. They are facing on Robertson street, one side, but St. Louis street is the thoroughfare that is used to reach those cemet-ries, except if you come from back of town. If you come from the city proper you have to take St. Louis and Conti streets. St. Louis is taken in preference.

Q. Now, Mr. L'Hote, are these cemet-ries frequented by large numbers of persons, ladies and children, during funerals?

A. Yes, sir; during funerals, and in fact every day, and on Sundays and on All Saints day. Those cemet-ries contain the tombs of some of our oldest creole families. I have myself a tomb, my family have, in the St. Louis cemetery, and my family on my uncle's side they have one in the old St. Louis cemetery—that is, the one facing

Basin street. The class of people that have to reach these cemet-ries are the very best in this city,

Q. Isn't Custom-house street frequently used to approach these cemet-ries and other streets within that area?

A. In fact, Custom-house street is used by the colored people, because the second cemetery is a colored cemetery, between Custom-house and Bienville, facing Robertson on one side, and Bienville street, Conti street, and St. Louis street are the three streets generally used by the white people.

Q. Isn't it a fact that the colored people are buried, some of them, in all these cemet-ries?

A. Yes, sir.

35 Q. These are Catholic cemet-ries, are they not?

A. Catholic cemet-ries.

Cross-examination.

By Mr. McLAUGHLIN:

Q. Mr. L'Hote, how long have your family owned and lived in the house on Treme street, 520 or 522?

A. In 520, we were all born there. I was born in 520—my children were all born in 520; in 522 I was born; in 520 my children were born.

Q. In fact, you have lived in that neighborhood forty years, haven't you?

A. Over forty years.

Q. And your family?

A. Over fifty years.

Q. Your family?

A. Yes, sir.

Q. You of course are familiar, or are you not familiar, with the ordinances of the city fixing the limits during those fifty years, either from hearsay or from what you know?

A. My observation has been directed to the ordinances that controlled that neighborhood since I was in the council. Prior to that, in other words when I was younger, I didn't pay a great deal of attention to what took place there, but I am satisfied that the neighborhood must have been very good, otherwise my folks would not have lived there.

Q. You don't know enough about that to testify?

A. Not personally.

Q. Not personally?

36 A. But from hearsay; yes, sir.

Q. Now, as to the limits as they were just before this present ordinance which you are seeking to annul, of course you are familiar with that, are you not?

A. I am.

Q. Now, those limits prior to last year, to this ordinance, included Burgundy and Dauphine streets, didn't it?

A. It did.

Q. Now, in the present limits there is but one street-car line and

one steam line. That is all the car lines that traverse the limits under the ordinance which you seek to annul?

A. That is what I said.

Q. In the old limits how many street-car lines are there?

A. The Dumaine line, which runs between Burgundy and Dauphine. Rampart street wasn't within that ordinance.

Q. No; Rampart street was not within the ordinance.

A. No, sir.

Q. But every street within the old limits had a street-car line on it, every transverse street running up and down?

A. You have now the Dumaine line, which runs upon Dauphine and Burgundy.

Q. Every street running up and down town in the old limits had a street-car line on it, hadn't it?

A. Not all.

Q. Well, that is a fact; up and down; and only one street in the present limits has a street-car line?

A. No, sir; not all in the old limits. Basin street has none.

Q. Basin street wasn't in the old limits?

37 A. Yes, sir; Treme has none.

Q. I am speaking of the old limits. Where did they end?

A. They ran from Poydras street——

Q. They ran from Poydras street to St. Louis and from the river back to Claiborne street, with the exception of Rampart, Canal, and St. Louis. In other words, the old limits practically included every street-car line in the city below Canal street?

A. Yes, sir

Q. And the present limits include only one street-car line and one steam-car line?

A. Yes, sir.

Q. The present limits have but one church in them, and you have testified that that is a colored church?

A. One church; a colored church.

Q. That is the only church?

A. Yes, sir.

Q. Now, the old limits, how many churches did they have?

A. They must have had a great many.

Q. Now, the new limits, that school you spoke of is just within the limits, on the corner of the new limits?

A. Within the limits, but it affects the one on Rampart street.

Q. Never mind the Rampart Street school. The only school that touches these new limits is the school corner of Robertson and Bienville?

A. Yes, sir.

Q. And that is in the limits because both sides of Robertson street is taken in. That is on the far side of Robertson street?

38 A. No, sir; it is on the inside.

Q. Do you know of any private schools in those limits?

A. I don't know of any.

Q. Do you know of any private schools in the old limits?

A. I don't know that, either.

Q. You know the Jesuits' school, don't you?
A. I know that; yes, sir.
Q. Wasn't that in the limits?
A. I don't believe the limits went that far. The Jesuits' school is on the corner of Common and Baronne, and it didn't go that far; it came by Basin street, and then came in Canal—that is, Custom-house——
Q. It didn't take in Canal?
A. No, sir.
Q. You don't know what schools were in the old limits?
A. No, sir.
Q. Do you know many stores, retail stores, in the present limits?
A. Now?
Q. Yes; dry-goods and notion stores and stores frequented by ladies—that is, those which were there before these new limits were established; say a year ago.
A. Prior to this ordinance?
Q. Yes.
A. Yes, sir; there were a great many.
Q. Were there as many as there were in the old limits?
39 A. No, sir; not as many.
Q. Not anything like as many?
A. No, sir.
Q. So that, as far as limits go, the old limits had a great many more churches, schools, street-car lines, stores, and other places that people frequent than these new limits have?
A. Yes, sir; and the larger you make the limits the more it would take in the stores, &c.
Q. The old limits took in a more attractive portion of the city than the new limits?
A. I don't know about being more attractive.
Q. Is the streets in the new limits as fine streets as in the old limits?
A. The finest streets were eliminated at that time in the old limits; Canal street, for instance. The new ordinance eliminates Gasquet street, and, in my opinion, Gasquet street is one of the poorest streets in the city.

By Mr. McCaleb:

Q. That was in the old limits, Gasquet street?
A. Yes, sir.

By Mr. McLaughlin:

Q. Now, Mr. L'Hote, the corner of St. Louis and Franklin is close to your house, isn't it?
A. That is the same block.
Q. Yes, sir. No. 1303 St. Louis street is the corner of Franklin?
A. Yes, sir.
Q. Now, 1303 St. Louis street, do you know anything of the nature of that house?
40 A. You mean now or in the past?

Q. In the past.

A. At different times those houses were invaded by this class of people, by these women. Whenever they were invaded, inside of a week or two weeks or three weeks, as soon as it came to my attention, I immediately had affidavits made and had them removed. Some of the cases were fought very hard in the recorder's court and I succeeded in removing them, but pending the litigation they remained there.

Q. That house at 1303 St. Louis street, do you know whether respectable people have lived there to your knowledge?

A. By the number I don't know.

Q. It is the house occupied by Viola Anderson.

A. I don't know that name.

Q. Do you know the house 1307 St. Louis, occupied by Mrs. Hayes? That is in your block?

A. Yes, sir; that is the block.

Q. Do you know the character of the houses in that block?

A. I do.

Q. These are two houses I have asked you about. You don't know their character?

A. No, sir.

Q. You don't know anything about the occupants there during the last five years?

A. Certainly.

Q. That house 1307 St. Louis street—the corner was 1303, so this couldn't be far from the corner—occupied by Mrs. Hayes, you don't know anything of the character of that house?

41 A. I do not. I was very diligent. I had the officers and commanders to report to me who occupied these houses, and they would report, "These houses are all right, such and such a person lives there," but whenever it was my information that they were occupied by these women I had affidavits made.

Q. This is a report—so that you will have it in front of you—of sixteen houses within two squares of your residence, giving the names of the occupants of each one of those houses—houses kept for immoral purposes—how long they have been occupied, and the names of the occupants. Will you look over that and see if you have any comments to make that will explain the report? (Document referred to shown to witness.)

A. Here you have Emma Smith, living there two months; Eva Clarke, four months; Ida Black, one month; Ella Williams, five months. Now, this is Marais street; that is the other block; this comprises the block I allude to as the block myself and neighbors had to pass to get to Rampart street. The other blocks, going towards Claiborne street in the back, as long as they were quiet and peaceable and there was no disturbance and no report came to me, I paid no attention to them. Naturally, it was not my place to play detective there, any more than on Rampart or Canal street. I gave my particular attention to my block, and these people that are living there now they have lived there pending this litigation.

By Mr. McCaleb:

Q. Gone in there lately?

A. Yes, sir.

42 By Mr. McLoughlin:

Q. But it gives the name- of former occupants—of one who lived in there twelve years. You don't know that?

A. I am positive she did not. That is a mistake, and I am ready to prove that Mrs. Noyes never lived there twelve years.

Q. Do you know of her at all?

A. Yes, sir; I made her move. I had much trouble with her. I had her removed by Sergeant Capeau, who is here to testify.

Q. When she moved out of this other one she moved there?

A. Yes, sir; one month she has been there, and I would have her removed, only the mayor gave orders not to move them.

Q. Do you know of any respectable families that have been living in those houses during the last five or six years?

A. Working people; yes, sir. They move in and move out; some pay the rent and some do not. The best families have been living for years on Marais street and Villere street. They live between St. Louis and Toulouse—in the blocks not parallel to those streets—in the side streets. Now, for instance, I will show you here, for instance, corner of Franklin and St. Louis. This house for years was occupied by a bar-room, and prior to that time, I believe, a grocery. Finally, it was turned into a tenement house and was occupied by respectable people. Who they were I don't know, because I didn't associate with them. I don't know their names, but I know they were respectable people.

Q. Have you any property in that district that is tenanted?

A. In that district?

Q. Yes.

43 A. All the property in that district, which is the one next door to my residence No. 522, is rented property. In there lives Judge Gastinel's family——

Q. I am speaking of your own personal property which you or your family own.

A. We own both pieces, 520 and 522.

Q. That is *the* all the property you own in that neighborhood?

A. No, sir; my sister owns opposite, where Mr. Gainnie, a respectable person, has been living fifteen or twenty years.

Q. Do you know the rents generally prevailing in that district? What I want to get at is this: Does the conversion of that district into a refuge for that kind of people raise the rental or lower it?

A. It raises it immensely, naturally.

Q. Is property worth more in that district with these kind of people living in it than it was before they went into it?

A. I was told that the rents had been increased on account of the scarcity of room. That existed wherever the demand existed for the property; rents went up; not the side streets within the boundaries; principally in the heart of that district. St. Louis street I don't

believe has been affected in the least, for I don't know of anybody moving in there, outside of these few people here. I don't know that it has affected that street.

Q. As a matter of fact, St. Louis street was a street that was added by the amendment to the new ordinance?

A. Yes, sir.

Q. The ordinance originally passed left out St. Louis street?

A. The original ordinance took in that same territory, but
44 took in the block up to Canal, it took in the block up to Canal, and the new ordinance took out that whole block from Canal to Custom-house, and took in both sides of St. Louis street. If the ordinance remained as it was—that is, to come within the depth of one block of St. Louis street—I had no objection to it, because I appeared before the committee and favored that ordinance in that way.

Q. You appeared before the committee and favored the ordinance which didn't put St. Louis street in?

A. I appeared before the committee, and went there for the purpose of preventing St. Louis street—naturally, you don't know what a council committee will do—and St. Louis street was eliminated, and naturally I didn't care. I wanted to go there to protect that street, because I was afraid that maybe somebody would say, "Put in that street," and it would go in, and if I slept on my rights I would have lost them.

Q. But you did tell the committee if St. Louis street was left out the ordinance wouldn't be opposed by you?

A. Well, I was interested in St. Louis street.

Q. That was all. If they left St. Louis street out you had no objection to the ordinance?

A. None.

Q. Do you know how many of these people are in the city?

A. You ought to ask the chief of police, not me.

Q. You said this class was crowding the neighborhood. You ought to know how many people are in the crowd.

A. Taking as a general estimate, using my judgment, of course, to fortify my expression, naturally, knowing that in the city
45 there are so many of these people occupying the whole of the city in every direction, I consider that territory to be a very small territory for them.

Q. It amounts to nineteen large blocks, of which three, I think, or four is taken up by graveyards?

A. There is one taken up by a graveyard in its entirety, and the others are taking up three blocks.

Q. That is about three solid blocks?

A. That would be seven blocks altogether.

Q. Seven entire blocks taken up by graveyards?

A. No, squares.

Q. I am speaking about squares.

A. One entire square, then the facing of all the cemeteries on Robertson street.

Q. So that one entire square is taken up by a graveyard, and the

facing of the other cemeteries on four other blocks on Robertson street?

A. Three other blocks facing Robertson street.

Q. You have no idea—of course you have not—as to how many of those people there are in the city?

A. Not exactly; no, sir.

Q. You say they were scattered all over the city?

A. From general reputation.

Q. Of course you don't know, but the general reputation is they were scattered all over?

A. Yes, sir.

Q. Now they are to be concentrated in this district?

A. They are going to try to concentrate them in this district.

46 Q. As long as they didn't put in St. Louis street you said you weren't objecting to the limits?

A. Providing they weren't placing them on St. Louis street.

Q. You didn't care what became of the rest of the limits?

A. I never gave it a thought, sir.

Q. I am asking you now.

A. I never objected.

Q. You don't care, as long as St. Louis street is left out, what becomes of the other streets?

A. No, sir.

Redirect examination.

By Mr. McCaleb:

Q. Mr. L'Hote, there has been big speculation down there in real estate recently, hasn't there?

A. I should judge so from the improvements that are taking place down there.

Q. Large improvements, to accommodate whom?

A. The improvements are to accommodate the property-owners having property within that territory.

Q. Now, has there been an exodus of lewd women within that area within the last six or nine months?

A. Oh, yes, sir; a great many of them have moved in there within those limits.

Q. What has caused this immigration into that area?

A. It is caused by threats made by the administration to eject the people from the premises they are occupying elsewhere.

Q. Has the city of New Orleans increased or diminished in its population in the last thirty years?

47 *Admission.*

It is admitted that the city of New Orleans has increased in that time from one hundred and forty thousand to nearly three hundred thousand.

Q. Well, that being the fact, ought the limits for lewd women be

increased or contracted? Have that class of people increased in the same ratio as the population?

A. I should think so.

Q. Do you know of any houses of prostitution or assignation adjacent to any schools or churches in the old limits? Did you ever hear of such a thing?

A. I have not.

Q. Now, this Spanish Fort railroad, where is its terminal depot here?

A. Its terminal depot in the city is corner of Basin and Canal streets.

Q. Has it been used for excursion parties out to Spanish Fort?

A. Very largely.

Q. Frequented by whom?

A. Recently principally by colored people—respectable people.

Q. Women and children?

A. Women and children.

Q. And formerly, several years ago?

A. By whites and colored both.

Q. You say that the Spanish Fort railroad passes through Bienville and Basin street?

A. Yes, sir.

Q. Do you know where there is an establishment of a
48 woman called Lulu White out there, recently erected?

A. It is at the corner of Bienville and Basin street, Bienville and Basin. The style of architecture is such you can almost see it from Esplanade street to Canal.

Q. Isn't that a notorious prostitute and keeper of a brothel?

A. That is her reputation.

Q. How many two-story houses are there on Bienville street from Basin to Claiborne, about?

A. Not over five or six.

Recross-examination.

By Mr. McLAUGHLIN:

Q. Mr. L'Hote, Basin street, corner of Bienville, wasn't that in the old limits?

A. Yes, sir.

Q. That always has been in the limits for those places?

A. Always.

Q. So this house that Lulu White built there could have been there under the old law the same as under the new?

A. Yes, sir.

Q. It is the same limits?

A. Yes, sir; the same old limits.

Sergeant THOMAS CAPAU, sworn and examined on behalf of plaintiff and of the intervenors.

Direct examination.

By Mr. MCCALEB:

Q. Sergeant, do you belong to the police force of the city of New Orleans?

49 A. Yes, sir.

Q. How long have you been attached to the police force?

A. About ten years.

Q. Do you know Mr. L'Hote, who testified in this case?

A. Yes, sir.

Q. Has Mr. L'Hote ever called on you to arrest and procure the removal of any prostitutes in his vicinity?

A. Yes, sir.

Q. Or keepers of assignation houses—how often, and when?

A. Well, last year—this year, I believe, around last February.

Q. Well, when he made this request of you what did you do, and what was done?

A. Well, in some instances I went to the parties and told them if they didn't move I would have to make affidavits, and they moved away; in other cases I had to make affidavits, one for Mrs. Noyse; I made three affidavits against her. She told the recorder she would move provided he wouldn't fine her.

Q. Wasn't she fined on one or two occasions you have referred to, this lewd woman, Mrs. Noyse?

A. I don't remember. I don't know whether she was fined or not. I know she moved away, anyway.

Q. What has been the character of the people living in the immediate neighborhood of this colored church on Bienville street for the last ten years past, until here recently?

A. Well, good and bad. I have known kept women to be living in that neighborhood for the last ten or fifteen years. I have known respectable people to be living in the same neighborhood for the last ten or fifteen years.

50 Q. By kept women you don't mean public prostitutes, you mean some fellow keeping a woman?

A. Yes, sir.

Q. His concubine. Now, where is the public school in that vicinity?

A. There is a public school located corner of Robertson and Bienville. There is another one on Rampart near St. Louis.

Q. Is it a girl-' or boys' school?

A. Girls and boys.

Q. Both; both of them?

A. No, sir; the one on Rampart street is girls'.

Q. That is a white school?

A. Yes, sir.

Q. And the one on Bienville street—that is for both sexes?

A. That is a colored school. That is for boys and girls.

Cross-examination.

By Mr. McLAUGHLIN:

Q. That is a colored school, isn't it?

A. Yes, sir.

Q. More colored people live in that section than white people, near that school?

A. Yes, sir; around Robertson street most all are colored people.

Q. You were in command of that precinct up to what time?

A. Up to the 31st of last May.

Q. Do you know anything that happened in that precinct since?

A. No, sir.

Q. So that everything that you have testified to refers to
51 prior to that?

A. Yes, sir.

Q. Was that ever what is considered a first-class neighborhood?

A. No, sir.

Q. Would you care to live in such a neighborhood yourself?

A. No, sir.

Q. Was it such a neighborhood as respectable working people would go to live in?

A. You mean the whole limits?

Q. I mean Bienville—these new limits.

A. I know on Conti street, very near the whole length of the street, there is some respectable people living, and on Claiborne street, but on Bienville street there is houses — prostitution; right upon Bienville street near Franklin and Treme street.

Q. Do you know anything about a house that was occupied—you spoke of it—by Mrs. Noyse on St. Louis street?

A. Yes, sir.

Q. Do you know how long she occupied that house?

A. Mrs. Noyse was formerly keeping an assignation-house on Treme street right near the corner of Bienville. Mrs. Jackson was keeping that house then. Mrs. Jackson moved away from St. Louis street, moved out on St. Louis street near Marais; then Mrs. Noyse took her place; that is about two or three years ago.

Q. Do you know anything about Emma Smith's house, corner of Franklin and St. Louis streets?

A. No, sir.

52 Q. Formerly kept by Tillie Dabis?

A. No, sir.

Q. Do you know anything about Viola Anderson's house on St. Louis street?

A. Viola Anderson, she had a room. Mrs. Noyse used to rent two houses, one she was living in—a small cottage—this side, and Viola Anderson was living in this other side.

Q. That was on St. Louis street between Franklin and Treme?

A. Yes, sir.

Q. That was close to Mr. L'Hote's house?

A. Yes, sir.

Q. In the same square?

A. Yes, sir.
Q. How long had this house been that class of house?
A. Ever since I can remember.
Q. As far back as you can remember, do you know of Mr. L'Hote or anybody else making affidavits against any occupants of that house except Mrs. Noyse?
A. No, sir; I don't remember.
Q. The house that is now occupied by Luella Williams, do you know that house? That is 1309 St. Louis, between Franklin and Treme, formerly occupied by Ella Woods.
A. Between Franklin and Treme?
Q. Yes; on St. Louis; that is next door to Mrs. Noyse's place.
A. Yes, sir; I know the house.
Q. Do you know the character of that house while you were in the precinct?
53 A. Well, when I was in the precinct there was an old black washwoman in there.
Q. Do you know whether she kept a respectable house or not?
A. Well, she was supposed to keep a respectable house.
Q. Do you know whether she did or not?
A. No, sir; I couldn't say.

Redirect examination.

By Mr. McCaleb:

Q. You made affidavits against this Mrs. Noyse?
A. Yes, sir.
Q. And the mayor sent down two city attorneys to prosecute her?
A. Yes, sir.
Q. Who were they?
A. I know one they sent down, Judge Lavillebeuvre.

By Mr. McLaughlin:

Q. Did he prosecute her?
A. Yes, sir.

Stephen Duncan, sworn and examined on behalf of plaintiff and intervenors.

Direct examination.

By Mr. McCaleb:

Q. Mr. Duncan, are you in any way connected with the Church Extension Society of the Methodist Episcopal Church?
A. Yes, sir; I represent it as presiding elder.
Q. Are you a member of the local board of that church?
A. Yes, sir.
54 Q. That church is the owner of the property described here, known as the Union chapel?
A. Yes, sir; that is the name.

Q. On Bienville street, in the square bounded by Bienville, Custom-house, Marais, and Villere?

A. Yes, sir.

Q. What congregation worship at that church?

A. What congregation?

Q. Yes.

A. The Methodist Episcopal congregation, about between four and five hundred members.

Q. How often do they assemble there for the purpose of public worship?

A. Well, three times a week; on the Sabbath and twice a week.

Q. On what days?

A. They meet on Tuesday night and Thursday night, and Friday night for the meeting of young people, and on the Sabbath.

Q. Were you ever pastor of that church?

A. Yes, sir; I was pastor there in 1885 and 1886.

Q. When you were pastor there in 1885 and 1886 what was the character of the neighborhood in the vicinity of that church?

A. Well, from observation, from Bienville or Marais we had an old vacant lot and there was a grocery on the corner on the lower side of the church; most of our members used to live there.

Q. What was the character of these members that lived around there?

A. They were loyal and had a good character.

55 Q. They were moral people?

A. Yes, sir.

Q. Virtuous people?

A. Yes, sir.

Q. Religious people?

A. Yes, sir.

Q. Quiet, law-abiding, and peaceable?

A. Yes, sir; we never had any disturbance there.

Q. How long were you pastor there?

A. Two years.

Q. Well, now, besides the religious services conducted in this church, is there any other organization which assembles there—a Sunday school?

A. Yes, sir; the Sunday school assembles there once a week.

Q. By whom is it attended and by how many persons?

A. We have about one hundred and fifty children, from the infant class on up to the parents.

Q. They have to receive religious instruction—catechism?

A. Yes, sir.

Q. Well, about how many people of this congregation worship in this church?

A. We had a membership when I was there of about four hundred and seventy-five and the followers. The following of the church would amount to about nine hundred.

Q. From what direction do the people who worship at this church or attend the Sunday school there approach the church?

A. Well, they come in from Bienville and around from
56 Canal, across Robertson street and Villere street. They used to live all around there and on Conti street, our members, when I was pastor there. They came from all directions.

Q. Has there been any change in the places of residence of your members since?

A. Yes, sir; since this new ordinance I was conversing with the pastor. Some of our members on Conti street had to move because they had to make repairs for this class of people that was coming in.

Q. These prostitutes?

A. Yes, sir.

Q. About what is the value of that church property?

A. It is worth about between fifteen and sixteen thousand dollars.

Q. Well, if this ordinance would be enforced what would be the value of that property then? What depreciation or increase in value would there be?

A. It would depreciate the property to nothing almost, because the respectable people wouldn't want to be passing there. Myself—in passing there a few nights ago I was myself insulted.

Q. Well, what effect has the threat to enforce this ordinance had upon the congregation of that church?

A. What effect?

Q. Yes.

A. Well, it has demoralized them.

By Mr. METOYER:

Q. When you say it demoralized them you mean it kept
57 part of the congregation away?

A. Yes, sir.

By Mr. MCCALEB:

Q. You say a number of these lewd and abandoned women have already taken up their habitation in the vicinity of this church?

A. Yes, sir.

Q. Well, are they openly plying their avocation there?

A. Well, you can see them lying out of the windows and standing at the doors.

Q. Pulling in the passers-by? Now, since when has this changed condition come about in the vicinity of this church?

A. Well, I found the change there on the second quarterly conference—that is, somewhere in May; I believe it was last May, as near as I can recollect.

Q. Have you preached there lately?

A. Yes, sir.

Q. Or participated in divine service there?

A. Yes, sir.

Q. Then would you say that the injury and damage to that church would be at least the sum of five thousand dollars?

A. Yes, sir; because when you are preaching they are ringing

with some kind of a bell. You can hear it from the pulpit. I don't know what kind of a bell. It annoys you in preaching.

Q. Was that next to the church?

A. Right opposite the church.

58 Q. Was that sort of thing existing there previously?

A. No, sir; when I was pastor everything was quiet.

Cross-examination.

By Mr. McLAUGHLIN:

Q. Now, you are not the pastor of the church?

A. No, sir; I am the presiding elder of it.

Q. You have charge of the finances of the church, I suppose, in general?

A. Every quarter they make their report to me.

Q. Now, do you know what that church cost?

A. Well, it cost about between—no, sir; I don't exactly. When I went there it owed sixty-seven hundred dollars.

Q. It cost around seven thousand dollars, didn't it?

A. It cost more than that. It was in debt.

Q. What was it insured for?

A. I don't know.

Q. Well, have you recently been offered any price for that church?

A. No, sir; not me individually.

Q. Well, has anybody that you know of?

A. Not as I know of.

Q. Have you put a price on the church recently?

A. No, sir.

Q. What is it worth now?

A. With the conditions surrounding the church now, it wouldn't be worth much to a religious body.

Q. What could you get for the church if it was to be sold now?

59 A. I don't know, unless that class of people died out that is moving around there.

Q. What do you think you could get for it?

A. I don't know. There was no offer.

Q. You have been talking about the price being diminished. I would like to know how you know it has diminished?

A. Because whenever anything happens to your property which would depreciate it you take some notice of it. If you make bad, lewd people move around into the neighborhood of it you can't get the same price you could before.

Q. Do you think it is possible that these lewd people might buy the church if it was for sale?

A. They might; they might not.

Q. Do you know whether any negotiations were made for the purchase of that church within the last six months?

A. Not as I know of.

Q. Who would know?

A. The pastor.

Q. Is he here?

A. Yes, sir.

Q. Where do the congregation of that church live now mostly?

A. They have been moving away from there lately, and I have some acquaintances that moved. Around on Conti street there was some two or three families moved out. They were paying twelve dollars rent, and they told me they would have to pay twenty-five dollars a month or move out.

60 Q. Do you know anything about the present membership personally?

A. No, sir.

Q. All you know about that is what the pastor reports to you?

A. Yes, sir.

By Mr. METOYER:

Q. What you know about the conditions of the neighborhood at the time you were pastor, how long has that been?

A. Thirteen years ago.

Q. Were there any prostitutes in that vicinity at that time?

A. Not as I know. Everything seemed to be quiet and respectable.

By Mr. MCLAUGHLIN:

Q. You don't know anything about it?

A. Well, I visited it every day. My members lived all along the streets there.

Q. If there had been any prostitution in the neighborhood would you have known it?

A. I had been around there, and I might have judgment to know right from wrong.

Q. If there was anything wrong would you make it your business to know it?

A. If they were members of my church I would.

Q. But you don't have that class of people members of your church?

A. No, sir; I don't have the trouble to have them.

Q. So the general condition of things in the neighborhood caused members to move, when?

A. That was within the last four or five months.

Q. That was told you by the pastor, I suppose?

61 A. Yes, sir.

Q. Do you know what the living of that church was?

A. When I was pastor and last year they raised two or three thousand a year.

Q. That was from all sources?

A. Yes, sir.

(The case was here continued to tomorrow, Wednesday, December 22nd, 1897.)

Testimony on Behalf of Plaintiff and Intervenors, Taken in Open Court—Hon. Fred D. King, Presiding—on Wednesday, December 22nd, 1897.

LOUIS CUCULU, sworn and examined on behalf of plaintiff and intervenors.

Direct examination.

By Mr. McCALEB:

Q. Mr. Cuculu, what business are you employed in?
A. In the banking business, sir.
Q. You are the cashier of the People's Bank of New Orleans?
A. Paying teller, sir.
Q. How long have you been in the employ of that bank?
A. Going on twenty-eight years.
Q. What official position do you occupy?
A. Councilman for the sixty ward, sir.
Q. Mr. Cuculu, how long have you lived in the city of New Orleans?
A. All my life, sir.
62 Q. How long has that been?
A. Well, if you want to know how old I am, I am fifty-eight years old.
Q. Do you know the limits that were designated for lewd women prior to January 1st, 1897?
A. Yes, sir.
Q. The old limits?
A. Yes, sir.
Q. How long had this class of women resided in those limits and on the streets in those limits?
A. Well, about thirty years—twenty-five to thirty years.
Q. What effect upon a locality or a building does the presence of these lewd women have; does it fit or unfit it for commercial and residential purposes?
A. Evidently so, sir; it makes them unfit for that purpose.
Q. Do you know whether that class of population here has increased or diminished in the last twenty-five or thirty years?
A. They have increased considerably, sir.
Q. Now, Mr. Cuculu, you know the new limits fixed by ordinances of the common council, lying between Custom-house, St. Louis, Basin, and Robertson streets; do you know that section of country?
A. Yes, sir.
Q. Do you know the class of houses and people who have resided in that section of the country—of the city?
A. There are some very good people on some of those streets, sir.
63 Q. Now, do you know whether there are a sufficient number of vacant buildings in that area to accommodate fifteen hundred public prostitutes?

A. No, sir. I have gone over the territory with the committee and the chief of police, and we all came to that conclusion when this ordinance was presented, and it was exactly the grounds that I took on the floor—that the limits were entirely too restricted.

Q. Are there a sufficient number of houses for rent or which could be rented by this class of people in these new limits to accommodate even one-half of them?

A. I believe not, sir, because many of them have spread already all over the city; that is one of the points I contended on the floor also.

Q. What was the cause of this spreading about?

A. There are several causes. First, the buildings are not suitable in those limits, the territory was not sufficiently large, and there was an extremely bad locality adjoining, which is that of the Franklin Street dens, destroying even part of that district, one of the lowest in the city.

Q. Do you know where the school-house is situated in that district?

A. Yes, sir.

Q. Do you know whether recently this class of women have located near this school-house?

A. Yes, sir; they have located next to it.

Q. Next door to it?

A. Yes, sir.

64 Q. Do you know where the colored church is there?

A. Yes, sir.

Q. Do you know whether any of them have located recently, within the past six months, within the vicinity of this church?

A. They have, sir.

Q. Why do you say that these houses are insufficient; are they cottages, one or two story houses? What is the character of the houses generally?

A. Mostly one-story houses.

Q. At the time you made the investigation with the committee—which committee is it, Mr. Cuculu?

A. The public order committee, sir.

Q. The public order committee; what class of people did you find inhabiting that area?

A. Well, we went there at night, after the meeting of the council, and it was the chief of police that showed us the whole quarters. We all came to that conclusion. In fact, it was entirely too restricted, and all the houses, as a rule, were against the original ordinance by being one-story houses.

Q. Now, Mr. Cuculu, do you know whether there was any petition or protest from the property-holders and occupants of what is known as the old limits for lewd women against the change of the limits?

A. Yes, sir.

Q. Who presented that protest, do you remember?

A. Well, those that came to me were Mr. Marinoni, Mr. Cabahan, Mr. Legendre, and many others.

65 Q. Were there a large number of names attached to this protest?

A. Sir?

Q. Were there a large number of names attached to this protest?

A. Yes, sir.

By Mr. McCALEB: I now call upon counsel for the city to produce those protests or petitions which were presented to the common council and to the public order committee, and I would state to the court that I have tried in vain to obtain the originals or copies of them.

By Mr. McLAUGHLIN: I gave instructions to them to turn the papers over and they told Mr. McCaleb's clerk that there was no such paper there. If there is any such paper, of course it will be produced, but I have never seen it and the committee clerk says there is no such paper.

By Mr. McCALEB:

Q. Now, Mr. Cuculu, do you know what became of these protests or petitions from the property-holders with- the old limits protesting against the change of the limits?

A. I couldn't tell you, sir, as I am not a member of that committee, but I saw two different protests.

Q. You saw two different protests?

A. Yes, sir.

Q. In whose hands did you last see them?

A. They were shown to me at the bank, brought to me by some of those parties protesting, Mr. Legendre amongst them. He had one of the lists.

By the COURT: I understand, Mr. McLaughlin, that if they
66 can be found they will be produced.

By Mr. McLAUGHLIN: Yes, sir; certainly they will be produced.

Cross-examination.

By Mr. McLAUGHLIN:

Q. Now, Mr. Cuculu, you went with the committee in making an inspection of these districts?

A. Yes, sir.

Q. Did the committee listen to all the protests that were made?

A. No, sir.

Q. They did not?

A. No, sir.

Q. Did they have any meeting of the committee?

A. Yes, sir.

Q. How long was this matter under discussion?

A. Oh, for months; four, five, or six months. I couldn't tell you exactly.

Q. There were numerous meetings on it?

A. Yes, sir.

Q. Numerous delegations of people came there at various times?
A. Yes, sir.
Q. The committee made several inspections of the district?
A. I know of one, the one I followed the committee in.
Q. Was there any disposition on the part of the committee to rush the thing through without investigation?
A. In my mind they were evidently bent upon it. That is my idea.

67 Q. You disagreed with the results, of course; you voted against the ordinance?
A. All the time.
Q. But the majority heard the same arguments that you heard on it and voted against you?
A. Well, I must say this much, they did; but some of the members that offered it, whilst the ordinance was under consideration in the meeting—several of them, I think two or three of them, admitted the narrowness of the district, but still they voted for the ordinance.
Q. Now, Mr. Cuculu, do you know how many people of lewd character there are in the city?
A. Well, if I ain't mistaken, the chief of police——
Q. The chief of police has testified. I don't want to have you contradict his testimony, but do you know?
A. Of course, I haven't followed those people. I can go simply by an official statement. I consider an official statement the chief of police——
Q. Well, he was here——

By Mr. McCaleb:

Q. What did he tell you?
A. About twenty-five hundred at the time.

By Mr. McLaughlin:

Q. You say that for about thirty years these limits have been established as they were under the ordinance that was in effect last year?
A. They were.

Q. Are you familiar with the ordinances on that subject?
68 A. They were there, sir.
Q. There was an ordinance passed in 1895 fixing the limits. Do you know that ordinance—4929, council series—that made some amendments to the limits? Did you consider that when you made that statement?
A. I didn't go back to the ordinances. I looked simply at this one.
Q. Then you don't know of your own knowledge what the limits were before this year?
A. No; I didn't think it was necessary when the whole thing was to be changed.
Q. Do you know how many houses in the old limits were occupied by women of bad character before the first of January of this year? We just want to know if, as a member, you found out how many

houses were occupied by women of this character before this present ordinance went into effect; how many such houses there was under the old ordinance.

A. I don't know.

Q. So that you don't know from your own knowledge or from any reports that you can direct us to how many houses in the old district were occupied by public women?

A. No, sir; except on certain streets; the houses were empty on several streets.

Q. But you don't know?

A. No, sir.

Q. Then on what do you base your idea that this district is so much smaller and has much fewer houses then they occupied
69 in the old district?

A. Because they occupied all that part of the city, on Burgundy, Custom-house; all of Burgundy, Bienville, Conti, the old Gasquet district that you have several blocks of; all those districts were destroyed and concentrated in a few blocks. That is all I know about it.

Q. Do you know how many blocks there are in this present district?

A. It is from the north side of Basin——

Q. Do you know, or would you rely upon the police for it?

A. It is from Basin to Robertson and from Custom-house to St. Louis.

Q. Well, you don't know. Do you know how many churches there are in this present district?

A. There is one that I know of. We saw that when we examined the district.

Q. Do you know how many churches there were in the old district? There were more than one, weren't there?

A. In the old district?

Q. Yes.

A. I don't know of any one.

Q. Do you know of any church on Derbigny street?

A. No, sir.

Q. Do you know of any churches at all in the old district?

A. No, sir.

Q. You don't know of any?

A. No, sir.

Q. But you don't want to say that there weren't any?

70 A. I don't want to say what I don't know.

Q. Do you know how many street-car lines there are in this district?

A. In the new district or the old one?

Q. The new district, this district which Mr. L'Hote is attempting to annul—attempting to annul the ordinance?

A. There is a double line there, the Villere line.

Q. That is one line of cars?

A. Yes, sir.

Q. That is the only line of street cars?

A. Yes, sir.

Q. Of course, we have the Spanish Fort line, which is only used for freight purposes?

A. Yes, sir.

Q. Do you know how many street-car lines there are in the old district?

A. To my knowledge, there is only one.

Q. Don't you know the Rampart and Dauphine line?

A. The Dauphine line?

Q. Yes.

A. No, sir; not in the district, because Mr. Claiborne, I believe it was in 1889, he had excluded Dauphine street since 1889—that is to say, from his own saying to me.

Q. I thought you said a moment ago that these houses were along Dauphine and Burgundy?

A. They were there, sir.

Q. Are there more street-car lines running in the old district than the new?

71 A. Yes, sir; the Orleans line that runs through Dauphine and comes back Burgundy.

Q. Haven't they got two lines?

A. No, sir; they are the same tracks.

Q. But there is more than one route?

A. There is only two routes.

Q. Wasn't a notice nearly a year ago given to these people that the limits were to be changed?

A. I believe the notice was given to them before—or was it after?

Q. About a year?

A. Yes, sir; I can't recollect exactly.

Q. Well, about?

A. Several months ago.

Q. You spoke about people signing a petition, and you said i was people that lived in the old district, therefore that was a petition of people who didn't want these lewd and abandoned people moved away from their property?

A. Yes, sir.

Q. Were there any petitions presented to you by property-holders in the present limits for lewd and abandoned women asking that you do not bring those people into that district?

A. Of course not. Of course not.

Q. They all wanted them there, didn't they?

A. Of course.

Q. They thought it would be a good thing to get them there?

A. Yes, sir.

Q. So that the only objections that came to you officially were from people who would lose the rentals by having their

72 houses empty. That was it?

A. Yes, sir.

Redirect examination.

By Mr. McCaleb:

Q. Wasn't there a petition from the residents of St. Louis street objecting?

A. Protesting against it?

Q. Yes, sir.

A. Yes, sir.

Q. Then there was a petition against this location of these women in the new limits?

A. On St. Louis street; yes, sir.

Q. Mr. Cuculu, do you know of any houses of prostitution in the immediate vicinity of the churches in the old limits? Have you ever heard of such a thing?

A. No.

Q. You say that there are a number of these houses that have been recently vacated and emptied in the old limits?

A. Yes, sir.

Q. What was the cause of that?

A. Why, this ordinance caused it.

Q. This ordinance?

A. Yes, sir.

Q. Do you know whether the police have been actively employed in notifying these people to leave the old limits and go into the new?

A. Yes, sir; they have.

73 Recross-examination.

By Mr. McLaughlin:

Q. Mr. Cuculu, you spoke about St. Louis street. Are you familiar with the character of the people living in St. Louis street around the neighborhood of Mr. L'Hote?

A. Yes, sir.

Q. Have you been familiar with that neighborhood for a great many years?

A. Yes, sir.

Q. Do you know the character of the houses on St. Louis street between his corner and Basin street, say four or five years back—I don't mean this year?

A. I don't know every residence there. I don't know how those people lived. I have heard that two or three of those houses were assignation houses; I have heard that.

Q. Do you know the block on St. Louis between Villere and Marais?

A. No, sir; except by passing by.

Q. You don't know that?

A. No, sir.

Q. Do you know the block between Treme and Franklin, the same square in which Mr. L'Hote's house is?

A. Yes, sir; I know.

Q. Do you know the character of the houses on that block?

A. Simply that I heard that some of them were assignation houses.

Q. How long have you heard that; more than a year or two back, several years back; as far back as you can remember, I suppose?

74 A. Yes, sir.

By the COURT:

Q. I don't hear what you say.

A. Yes, sir.

By Mr. MCCALEB:

Q. These places were there on the unbeknown quiet and by the suff-rance of the police?

A. That is what I always understood; they were there on the quiet.

JOHN ST. PAUL (jurat waived) examined on behalf of plaintiff and intervenors.

Direct examination.

By Mr. MCCALEB:

Q. Mr. St. Paul, did you present a petition or protest from the property-holders or citizens of what is known as the old limits for lewd women against their removal to the new limits?

A. Yes, sir; I appeared before the council for Mr. Peret, Mr. Curtis, Mr. Legendre, and a number of others representing a good deal of property in that district, say bounded by Dauphine and Rampart, Canal and St. Louis streets, and protested against the removal of these women from that district on the ground that the property in that whole district had so long been given over to these purposes that it was, practically, confiscation of property to cause their removal now, because no decent family could or would, for

75 many a year to come, live in that district, just on account of previous association—the previous character of the neighborhood and the streets; that it would be a practical loss of the rentals of the properties for some years to come. I appeared before the council and argued my case.

Q. Did you present a written petition or protest there, Mr. St. Paul?

A. That I presented one I could not say, but that one was presented—I am satisfied one was presented.

Q. One was presented?

A. Oh, yes, sir.

Cross-examination.

By Mr. MCLAUGHLIN:

Q. Now, Mr. St. Paul, these people wanted the limits kept where they were so that they could collect the rents on their property—purely a selfish motive on their part?

A. I guess about the same principle any property-holders have.

Q. It was not with regard to the morals of the community, like on the other side of the limits, where they were pushing the people?

A. As far as my clients were concerned, no; but I will say that Mr. L'Hote did appear before the committee and make a protest on that ground.

Q. But, as far as your clients were concerned, they had no interest in Storyville?

A. Well, I was employed to place the matter before the committee on public order and to show why they should not be disturbed in the particular neighborhood that I have specified.

76 Q. Now, property used for such purposes, does it rent higher or lower than property used for respectable purposes?

A. If you want me to state as a matter of fact what I know about this neighborhood, I couldn't say; I haven't any idea if the rents are higher; if you want me to tell you what my idea is, I will give it to you.

Q. You don't know whether your clients lose any money from the change?

A. I don't know of any change being made.

Q. Don't you know of any houses being vacated?

A. I know of a number of them being vacated, but I don't know about a general vacation.

Q. You don't know whether it makes any difference in the rent of a house whether it is occupied by respectable people or tenderloin people?

A. You couldn't in that district rent any house to a respectable person.

Q. All you went there for was to save these properties for these people?

A. Yes, sir.

Q. You were accorded a respectful hearing by the council, weren't you?

A. Very.

Q. They didn't act hastily, did they?

A. I don't know about that.

Q. Gave you time to discuss the question with them, didn't they?

A. Gave me as much time as I needed, but I don't know

77 that they gave me quite as much attention as they should. Now, you are getting into deep water, Mr. McLaughlin. I will tell you more than you want.

Q. I will listen to everything you want to say.

A. It was cut and dried before they went before that committee.

Q. They didn't tell you that you couldn't speak, did they?

A. Oh, they let me speak until I got tired.

Q. And everybody else did the same?

A. Yes, sir.

Q. They listened to everybody and then decided?

A. Just like water on a duck's back, it went right off.

PIERRE PERET, sworn and examined on behalf of plaintiff and intervenors.

Direct examination.

By Mr. MCCALEB:

Q. Mr. Peret, do you know whether there were any protests presented to the city council or to any committee of the city council by property-holders in what is called the old limits for lewd women against the change of the limits to what is commonly known as Storyville?

A. Yes, sir; there was a protest signed by a large number of property-holders in the old limits, and, moreover, by most of the Canal Street merchants on this side of Canal street that protest was signed.

Q. Now, isn't it a fact that that protest was signed by every person in the old limits and every merchant on Canal street
78 and the streets running at right angles thereto, with the solitary exception of D. H. Holmes and Mercier?

A. By persons living in that district; I couldn't say that it was signed by everybody, but it was signed by a large number of property holders and by most of the merchants on Canal street excepting D. H. Holmes and excepting Mercier, too.

Q. Mr. Peret, do you know the limits of Storyville created by this new ordinance for women lying between Custom-house, St. Louis Basin, and Robertson streets?

A. I do; a little.

Q. Is there a sufficient number of vacant properties or properties which can be rented in that district to accommodate all of the lewd women in the city of New Orleans?

A. I don't suppose there is half room enough for them; I don't think.

Q. There is not half enough room for them?

A. I don't think.

Q. Mr. Peret, how long have these women occupied and lived in these old limits?

A. I have seen them in those limits since I have been in this city—for the last twenty-seven years.

Q. For what purposes other than for houses of prostitution or assignation could the properties occupied by this class of women in the old limits be used or rented?

A. I don't think anybody, any respectable person, would go and live in there, sir.

Q. To whom was this petition or protest that you speak of presented?

79 A. It was presented to the committee on public order of the city council.

Q. About how many names were affixed thereto?

A. I couldn't say exactly, but I believe there were more than one hundred names.

Q. Was it a simple protest or did *give* it give reasons why the parties objected to the change of the limits?

A. It was an objection to changing the limits.

Q. And gave reasons?

A. The petition asked to retain the old limits.

Q. The old limits are much larger in area and contain a great many more buildings suitable for that purpose than the new limits?

A. No doubt.

Cross-examination.

By Mr. McLAUGHLIN:

Q. Now, I have traced that petition in the hands of that committee. This petition was signed exclusively by people interested in the old limits?

A. Yes, sir; and people not interested. All the merchants on Canal street who signed had no direct interest in it. They only signed it thinking that these people were harmless in the place they occupied.

Q. In other words, they wanted to keep them where they would be closer to the stores than in the new limits?

A. Yes, sir.

Q. Now, nobody in the new limits except Mr. L'Hote protested against the change?

80 A. We didn't request signatures from people in the new limits.

Q. You didn't request signatures from people in the new limits?

A. No, sir.

Q. And your idea was to keep these people there because they paid you rent, wasn't that it?

A. Yes, sir; it was.

By the COURT:

Q. Do you say you own any property there?

A. I do; yes, sir.

Q. Where?

A. On Custom-house street.

Q. Rented for what purpose?

A. One is rented for a grocery and coffee-house; the other is rented by a woman of this class.

By Mr. McLAUGHLIN:

Q. That is on Custom-house street?

A. Yes, sir.

Q. Most of the people who signed this petition with you, leaving out the Canal Street merchants, are people similarly situated?

A. Yes, sir.

Q. So that it was for their own motives they wanted these people kept in the old limits?

A. Yes, sir; they were either property-holders or dealers, drug-

gists or people occupying establishments of that kind, who signed the petition.

Q. Do you know how many of these people there are in these limits?

A. I couldn't say.

Q. Or were?

81 A. I couldn't say. I am not posted about that.

Q. Do you know how many houses there are in the new limits?

A. I only know by what I heard here, but I couldn't say otherwise.

Q. Why did you say that you were positive there wasn't half enough of room in the new limits if you didn't know the number of houses?

A. If you take the limits from Poydras to St. Louis and from Claiborne to the river, it is easy to understand that there is more houses in the old limits.

Q. Are these limits filled with these women?

A. I don't think the whole limits were filled by these women, but a large portion. I understand they were on Gravier street and Dryades street, and on uptown streets besides the downtown side.

Q. You don't know how many there were?

A. I have no idea.

Q. The chief of police's report would show. If he reports one way, would you believe his report to be correct; would it influence your opinion?

A. It is hard to say about that.

By the COURT:

Q. Do you know anything of it of your own personal knowledge?

A. About the number, I couldn't say, sir.

Redirect examination.

By Mr. McCALEB:

Q. Mr. Peret, you people that own property down in that district, does the city of New Orleans exempt you from paying taxes?

82 By Mr. McLAUGHLIN: It is admitted that she does not.

By Mr. McCALEB:

Q. What are your assessments there, up to the full value of your property?

A. Yes, sir.

B. G. CARBAJAL, intervenor, sworn and examined on behalf of plaintiff and intervenors.

Direct examination.

By Mr. McCALEB:

Q. Mr. Carbajal, are you the owner of the property described in the petition of intervention filed in this case, consisting of two cer-

tain lots of ground in the square bounded by Bienville, Marais, Custom-house, and Villere streets?

A. Yes, sir.

Q. What kind of houses are erected on those properties?

A. Double cottages, one-story front, with gallery, and two-story kitchens.

Q. Now, the residence No. 1522 Bienville street, is that rented to Mr. Edward J. Dumoil?

A. Yes, sir.

Q. Who is he?

A. Well, he is a colored gentleman that I know for a number of years. He works around the Turf exchange. They are respectable people, as far as I know.

Q. Does he live there with his family?

A. Yes, sir.

83 Q. How much rent does he pay you a month?

A. Seventeen dollars.

Q. Now, the residence 1524 Bienville street, adjoining, is that rented to Joseph Page?

A. Yes, sir.

Q. Who is he?

A. He is a cook by profession.

Q. Well, does he live there with his family?

A. Yes, sir.

Q. How much does he pay you?

A. Seventeen dollars.

Q. Now, 1526 Bienville street, adjoining that, occupied by Alexander Scott?

A. It was occupied by Alexander Scott, to the best of my knowledge, and his family for about twelve or fifteen years.

Q. How much was he paying you?

A. About sixteen dollars a month. This gentleman is now dead.

Q. You heard this policeman testify here yesterday. What is his name?

A. Mr. Shipley.

Q. Shipley?

A. Yes, sir.

Q. Now, will you state when Scott vacated those premises who you rented to, and how you came to rent it, and what was the character of the people as represented to you?

A. After Mr. Scott's family moved away from there I put up the house for rent, and we had a great many applicants for it, some white fancy women and colored women. I objected to rent

84 to them. They offered me a big price for the property, more than I was renting them for. I refused. One came by the name of Mary Jackson, who is living there now——

Q. A colored woman?

A. Yes, sir. It was represented to me they were quiet people. I informed her that I had three other colored families in there, and I didn't want to lose three for one. She assured me that there would never be any complaint about her. Furthermore, she referred me

to Mr. Shipley, the officer of the beat, for reference. Later on I met Mr. Shipley on Villere street, and I asked him about this tenant, and he told me I had a good tenant, a good-paying tenant; that I wouldn't have any trouble with her.

Q. Do you know whether there was any petition or protest presented by the property-holders, say on Gasquet street, against the limits—against changing the limits for lewd women from the old to the new limits, commonly known as Storyville?

A. Yes, sir; there was.

Q. In writing?

A. In writing; yes, sir.

Q. About how many property-holders signed that?

A. Well, we took that petition and we had it filled in a very short time. Every landlord we come across he was but too willing to sign it, but I don't recollect exactly the number. To the best of my knowledge, there was over thirty of them.

Q. Mr. Carbajal, how long have these old limits been occupied by this class of women?

85 A. I arrived in New Orleans in the early part of 1866—April, 1866. I resided at the corner of Canal and Franklin from 1866 to 1872. I kept business on the corner of Villere and Gasquet streets from 1872 to 1891. That has been nearly thirty years now I have been living in those surroundings, and the neighborhood has always been impregnated with this class of people.

Q. What would be the effect, if this class of people were run out of the old limits, upon the property that has been occupied by them for so many years?

A. In so far as the revenue of the property is concerned, it would be complete confiscation from the owners.

Q. Now, Mr. Carbajal, do you know these new limits between Custom-house, St. Louis, Basin, and Robertson streets?

A. Yes, sir.

Q. Are there enough houses unoccupied or which could be rented by this class of women in those limits to accommodate them?

A. I don't think so, sir. Those limits were pretty well filled with people before. There is very few houses for rent now in there. I don't think you could count a dozen in the whole district entirely; there are very few empty lots of ground, and I don't see how it is possible that you could pack them in there.

Q. Now, what effect has this ordinance had upon the property in Storyville?

A. The effect—previous to the passage of the ordinance, I believe in January, 1897, the rents had gone up from one hundred

86 to three hundred per cent. higher in advance of the ordinance being passed.

Q. Well, there were, then, some expectations or assurances given in advance of the passage of the ordinance that these limits were going to be located there?

A. Yes, sir.

Q. And you say the rents went up on that expectation to three hundred per cent.?

A. From one hundred to three hundred per cent. on account they hadn't room to accommodate them all there, and, of course the rents got higher.

Q. The petition that you referred to, that was presented to the committee on public order of the common council of New Orleans do you remember what time it was presented to them?

A. I believe it was presented somewhere about the latter part of August or the early part of September; I am not certain.

Q. 1897?

A. 1897; yes, sir.

Q. This year or last year?

A. This year.

Q. Who represented the property-holders, the petitioners in that case, in that matter?

A. We applied to our councilman, Mr. Moran, from the first district, to explain to him the condition of our property, and he understood the nature of it, and the damages that was going to be done to the property. He advised us to get up a petition, and he himself sent it to the council at a regular meeting.

87 Q. What was done with it then?

A. From there it was referred to the public order committee and after that it was committed to a committee, and it never passed any opinion on it at all.

Q. It was committed and recommitted?

A. Yes, sir.

Q. And they never passed any opinion on it?

A. No, sir. I wish to state, though, they didn't present the petition at one time at all to be read; that Judge Rogers—Wynne Rogers—he spoke for us, but there was nothing done. The committee seemed to have everything cut and dried, and paid no attention to anything.

Cross-examination.

By Mr. McLAUGHLIN:

Q. Mr. Carbajal, you own property in the old limits?

A. I do, sir.

Q. Rented for immoral purposes?

A. For all sorts.

Q. You own more in the old limits than in the new limits?

A. I own more in the first district than in the second.

By the COURT:

Q. Mr. Carbajal, time is precious. Please try and answer a direct question. Now, answer the question and explain afterwards.

By Mr. McLAUGHLIN:

Q. You own a great deal of property around Gasquet street used by these women, don't you?

88 A. I do, sir.

Q. Your intervention in this case was to keep them in the limits, the old limits?

A. My intervention was to preserve the general renting of my property.

Q. That was it. Now, this property that is rented to Mary Jackson, did Officer Shipley tell you what kind of a person she was in character?

A. No, sir.

Q. Did you ask him?

A. I explained by words to him that I had three other colored families that appeared to be respectable there, and I didn't want to lose three tenants for one. I told him that I refused other tenants at a higher rate, knowing them to be prostitutes, and they wanted the property; and I told him that this woman she had answered my questions very correctly, she assured me no complaints would be made about her, and being a colored woman I thought she was telling certainly the truth, and Officer Shipley asked me a very vulgar expression about that.

Q. Do you know what kind of house she keeps there in your property?

A. I couldn't say.

Q. Do you know whether it is respectable or not?

A. I don't know. I couldn't prove it by myself. I have been there three or four times, and never saw anything disorderly from her.

89 Q. What does she do for a living?

A. She rents rooms. I don't know whether she works out.

Q. Officer Shipley testified yesterday that it was used for immoral purposes. Do you contradict his statement?

A. I can't contradict his words.

By the COURT:

Q. What did you rent that house for—for how much?

A. Sixteen dollars.

Q. Sixteen dollars?

A. Yes, sir; to Alexander Scott.

Q. He died?

A. Yes, sir.

Q. What are you renting it for now to this woman?

A. This woman she came here——

Q. Answer the question. What are you renting it to her for now?

A. She is paying me now twenty dollars.

By Mr. MCLAUGHLIN:

Q. Does she pay you by the month or week?

A. Monthly, sir. I never rent no house by the week.

Q. Now, this petition that you speak of that was presented to the council was presented long after the ordinance had been passed, wasn't it?

A. I never knew the ordinance had been passed until August, when I came from California.

Q. You don't know whether any protest had been made against the ordinance before it was passed? You weren't here?

90 A. I don't know; no, sir.

CHARLES P. GUICHARD, sworn and examined on behalf of plaintiff and intervenors.

Direct examination.

By Mr. McCALEB:

Q. Mr. Guichard, where are you employed, in what capacity?

A. Teacher in public schools.

Q. What school?

A. Robertson Street school.

Q. Where is it situated?

A. Corner of Bienville and Robertson.

Q. How many students have you there?

A. We have now about eight hundred and thirty.

Q. Where do these children live that attend that school?

A. Mostly back of town. Last year I noticed I had about one hundred this side of Claiborne street, but they were forced to move. I don't know whether the rent was raised or they didn't like the neighborhood. There are very few living there now.

Q. Are there any houses of prostitution or assignation in the vicinity of this school-house?

A. None that I know of. There are some houses there I always thought looked suspicious, with signs "Furnished rooms," but nothing openly to show.

Q. Don't you know that a member of the committee on public order reported that there was a house of prostitution on either side of this school-house——

91 A. No, sir.

Q. And recommended its removal—Mr. Marmouget?

A. I know it was in the papers.

Q. You don't know the character of the houses in the vicinity of this school-house?

A. The house on Bienville street next to the school was occupied by only an old German lady, a widow. She was very respectable. Now, the house on Robertson street was most of the time closed. We have a gallery open there, and we have three windows, and couldn't see what was going on from the gallery. It was a very quiet house.

Q. Now, on Bienville street—don't you know that there are a large number of prostitutes on Bienville?

A. I see some of them that look like prostitutes.

Q. Sitting on the steps?

A. Yes, sir.

Q. Calling men in?

A. Called me in often.

Q. How long since that has been going on?

A. Only since school has opened, last November.

Q. Since last November?
A. Yes, sir.
Q. You were school teacher there previously?
A. I have been there eight years.
Q. Did you ever know of such a thing there before?
A. No; I was never called in before.
Q. How many lady teachers have you under you?
A. Fourteen.
92 Q. How many?
A. Fourteen.
Q. In that school. How many girls attend that school?
A. Now, there are about four hundred and sixty.

By the COURT:

Q. Four hundred and sixty. It is a boys' and girls' school?
A. Yes, sir.

By Mr. MCCALEB:

Q. And boys?
A. About three hundred and seventy-five boys.
Q. They are kept in separate class-rooms?
A. All except mine. I have boys and girls.
Q. Those are the little children?
A. No, sir: the highest class, eighth grade.
Q. Since the passage of this new ordinance have you kept the children in or left them out at twelve o'clock?
A. They were in the habit of going to lunch—one hundred or one hundred and twenty-five of them: those that lived in the neighborhood, they were allowed to go home to lunch.
Q. When—previously or now?
A. Before, up to last June.
Q. Do you allow them to do that any more?
A. No, sir. I consulted the superintendent, and we thought it was better not to leave them out.
Q. Why?
A. On account of these people coming in the neighborhood.
Q. On account of these prostitutes coming into the neighborhood?
A. Yes, sir.

93 Cross-examination.

By Mr. MCLAUGHLIN:

Q. Most of your children, you say, live back of Claiborne street and Robertson?
A. I think so. I think before we had about one hundred living in the neighborhood. I haven't made my registry yet. I meet very few coming to school from that neighborhood where I used to see them before.
Q. Before you had only about one-eighth in that neighborhood?
A. Yes, sir.

Q. Yours is the only public school in the neighborhood?
A. Yes, sir; this side of the basin.
Q. You are just on the edge of the district?
A. Yes, sir.

By the COURT:

Q. You are on one of the corners?
A. Yes, sir: and the graveyard on two corners.

By Mr. MCLAUGHLIN:

Q. There is only one church in that district, ain't they?
A. I think so; one on Bienville.
Q. Only one street-car line?
A. The Villere Street line, and the Spanish Fort railroad.
Q. Do you know whether the school board asked any report from you about these ordinances, whether they were objectionable?
A. I spoke to the superintendent about it. He didn't think it was good; thought it was worse than before. A few days before school opened there was a young woman trying to detain
94 and hold an old man, right at my door, and I never saw that before.
Q. Where is your door? The door of your school, you mean?
A. Yes, sir; about thirty feet from Bienville on Robertson.
Q. Do any of your teachers have to pass in that district to go home?
A. They have to go out Robertson street or Bienville street, those living this side of Claiborne street. There was one living on Marais street, and she told me she had to move on account of these people. Some take Canal and go out Robertson if they live uptown, but the others live back of town.
Q. Where is the limit of your school district?
A. Boys, from Canal to the Basin and from the lake to the river, and the girls, from Canal to St. Bernard and from the lake to the river.
Q. Canal from——
A. From Canal street to the basin canal.
Q. To Carondelet walk?
A. Yes, sir.
Q. And you have only one hundred children in your district coming from the front?
A. Yes, sir.
Q. So that if anybody would be incommoded in that district, it would be one-eighth of the children?
A. Yes, sir.

Redirect examination.

By Mr. METOYER:

Q. Would only one hundred see the vice and immorality there now?

95 A. They have to go out Robertson——

Q. You don't understand my question. Would only these one hundred scholars see these people?

A. The whole school has to go out Robertson street either towards Canal or towards Conti. Most of them live downtown.

Q. These school teachers that live uptown, what route do they take?

A. Either Bienvilie or Robertson. About four, I think, go out Robertson. The balance go out Bienville.

Q. Supposing they go out Robertson street towards Canal, would they not have to pass these houses?

A. One square.

Q. That square is throughly crowded now with these women?

A. I think so, sir.

Q. Suppose they went towards Conti street?

A. Well, to Conti, they would have one square.

F. CALLICO, sworn and examined on behalf of plaintiff and intervenors.

Direct examination.

By Mr. MCCALEB:

Q. Mr. Callico, what is your business?

A. Sexton of the St. Louis graveyard, on Claiborne street from St. Louis to Custom-house.

Q. Now, about how many people are buried in that graveyard?

A. Since I have been there?

Q. No; altogether.

A. Sir?

96 Q. How many are there altogether?

A. Oh, I can't tell you. There are thousands and thousands. I can't tell you; I never kept account of them.

Q. Is that graveyard frequented every day?

A. Yes, sir.

Q. Do you still use it for burial purposes?

A. Yes, sir.

Q. It is not closed, then?

A. No, sir.

Q. Now, how do the funerals approach that graveyard?

A. Well, before they used to come from all those streets, from St. Louis, from back of town, sometimes on St. Louis, sometimes Conti, sometimes Bienville, but more often on Conti than Bienville on account of the railroad on Bienville obstructing the road, so they always took St. Louis and Conti to come.

Q. And now?

A. Now the only street they have got is St. Louis street.

Q. Well, why do they take only St. Louis street now?

A. On account of these bad houses on Conti street, because I heard complaints about the people that they met every time they

had any funeral in there. I heard the people complaining. It is hard to pass on that street to see all those women expose their person in the door when the people pass. I heard that very often, mostly every funeral that come there.

Q. Do ladies and children come to the funerals there?

A. Yes, sir.

Q. And do they come to the graveyard there to visit the
97 resting place of the dead—their relatives?

A. Yes, sir; mostly every day.

Q. Every day?

A. Mostly every day.

Q. On what days are the crowds the greatest there?

A. On Sunday generally.

Q. On Sunday?

A. Yes, sir.

Q. And then on All Saints' day?

A. Yes, sir; oh, yes; on All Saints' day there is a big, big crowd then.

Q. Have you heard any of the priests complain about it or other persons?

A. No; I never heard anything about the priests.

Cross-examination.

By Mr. McLAUGHLIN:

Q. Where are your cemeteries fronting, on what streets?

A. From St. Louis to Custom-house, and from Robertson to Claiborne.

Q. Have they entrances on Claiborne street?

A. No, sir; it is all on cross-streets—St. Louis, Conti, Bienville, and Custom-house.

Q. As a matter of fact, since Conti street has been eliminated on account of these people, as you say—before that didn't all funerels from downtown come up Claiborne street?

A. By preference. Some comes by St. Louis.

Q. The general thoroughfare to reach that cemetery is by
98 Claiborne street now?

A. Yes, sir.

Q. From uptown and downtown?

A. From uptows they have to come around St. Louis, because they all come around from Canal and pass down Claiborne.

Q. Most of your funerals come from Claiborne street?

A. Yes, sir; now.

Q. So that the graveyard is between Claiborne and Robertson streets?

A. Claiborne and Robertson.

Q. And you have gates on the side streets?

A. Yes, sir; on each street.

Q. So in order to get to your cemeteries two-thirds of the people never cross Robertson street; they come from Claiborne street, don't they?

A. I can't say that exactly; some come from back of town.
Q. Don't most of them from back of town come from Claiborne street?
A. I couldn't say that; sometimes they come from towards town.
Q. Do they come from towards town by way of Claiborne street always?
A. No, sir; by St. Louis street very often.
Q. So that St. Louis street is a favorite street for the people?
A. Yes, sir.
Q. It is not as well paved as Claiborne street, is it?
A. No, sir.
Q. And it is really out of the way to go that way?
A. Yes, sir.
99 Q. Did your cemetery association make any protest against this ordinance?
A. I never heard anything about it; never seen any.
Q. Did you ever make any complaint about it to your superiors?
A. No, sir.
Q. Did you object to the ordinance at all?
A. I never attended to that. I have my graveyard to attend to.

By the COURT:

Q. You look after the dead; not after the living?
A. Yes, sir.

By Mr. MCLAUGHLIN:

Q. Dead people don't object to it?
A. No, sir.
Q. There has been a cemetery right in this limits, on Basin street, ever since you can recollect, hasn't there?
A. Yes, sir.
Q. Right in the heart of the old limits?
A. Yes, sir.
Q. Always has been?
A. Yes, sir.
Q. Nobody ever objected to that?
A. I can't say.
Q. You never heard anybody objecting?
A. No, sir.

HENRY TAYLOR, sworn and examined on behalf of plaintiff and intervenor.

100 Direct examination.

By Mr. MCCALEB:

Q. Mr. Taylor, what is your profession?
A. Minister.
Q. Of what denomination?
A. Methodist Episcopal Church.
Q. Where is your congregation?

A. On Bienville street between Marais and Villere.

Q. You are, then, the pastor of the Methodist Episcopal Church?

A. Yes, sir.

Q. It is called a chapel generally?

A. Yes, sir; Union chapel.

Q. Now, how long have you occupied that position?

A. Two years.

Q. What is the value of that property?

A. Let us see. I would think that the property is worth about ten or fifteen thousand dollars, more or less.

Q. What injury or benefit would be caused to this property by the enforcement of this ordinance, the new ordinance relative to the limits for lewd women?

A. It would destroy the value of the property for the purpose for which it was intended for, as a place of worship.

Q. Now, this property belongs to the Church Extension Society, organized under the laws of the State of Pennsylvania, doesn't it?

A. Yes, sir.

Q. And was bought by them?

A. Yes, sir.

101 Q. You say it would be unfit for the purpose for which it was erected?

A. Yes, sir.

Q. What effect has the threat to enforce this ordinance had upon the congregation attending that church?

A. It has had the effect to diminish the congregation a great deal.

Q. About how much?

A. About twenty-five per cent., you may say, sir.

Q. Have any of the members of your congregation left their residences in the limits, these new limits?

A. Yes, sir; moved out of it.

Q. Why did they move away?

A. They said to me they were forced to get out.

Q. Have you noticed any change in the past two years in the character of the population in the vicinity of that church?

A. Yes, sir; since they have sought to enforce this new ordinance I have noticed that we have a happy set of women around there, sir.

Q. You have noticed a number of new faces there?

A. Yes, sir.

Q. Of these lewd women, prostitutes?

A. Yes, sir.

Q. How many of them are in the immediate vicinity of your church?

A. Well, I think they have crowded that place in around my church there, with the exception of about three or four families.

102 Q. When has this crowding taken place?

A. Well, since the threat was made to enforce this new ordinance, sir.

Q. When was that—within the past six months?

A. Yes, sir.

Q. About how many of these women have come inside there that you have seen—these new faces—women of fancy?

A. There is a goodly number of them. I couldn't state the exact number.

Q. How many persons attend your church?

A. We have a membership there now, sir, of about three hundred and odd members.

Q. What was the former attendance there?

A. There were about from four hundred and fifty to five hundred or more.

Q. How many children have you attending Sunday school there?

A. One hundred and seventy-odd.

Q. Was the attendance formerly greater or less than now?

A. It is less now.

Q. To what do you attribute this diminution in attendance of Sunday-school scholars and church members?

A. It is on account of passing these lewd women, and things they see has a tendency of parents keeping them from our church and sending them elsewhere.

Q. Can the members of your congregation or the school children attending Sunday school there reach your church without passing through the streets dedicated to these masses?

A. No, sir.

103 Q. Has your church ever protested against the granting of a permit to any bar-room, cafe chantante, beer-jerking saloon, or anything of that sort in that neighborhood?

A. Yes, sir.

Q. How many times?

A. The petition has been up three or four times and went before the committee on public order.

Q. Did they express sympathy with you?

A. Not very much.

Q. Dis they grant you any relief? What did they tell you?

A. Well, the relief was they would appoint a committee and look after the matter and see how that district was situated and how our church was surrounded, and so on, but they never seemed to show us very much feeling in the matter.

Q. Did they suggest to you to move your church?

A. Yes, sir; they said we ought to get out—we ought to get out.

Q. They thought that the good ought to make way for the evil?

A. Yes, sir.

Q. That is the way reformers do generally?

—. ——.

Cross-examination.

By Mr. McLAUGHLIN:

Q. Before this ordinance was passed a year ago did you make any protest against that when it was first proposed to include your church in the limits?

A. No, sir; we didn't protest in the way of a petition, but I called upon the mayor with a body of ministers myself in person.

104 Q. What did the mayor tell you?

A. He said that there was so many letters coming into him from property-holders designating that place there to be the proper place for a tenderloin district that he didn't see then what he could do about the matter. He was sorry for us, but he thought we would have to go to work and preach and reform them.

Q. That that was the best adapted?

A. He said that from the number of letters that came in from parties.

Q. Now, your church, is it worth any more to you now than it was before, in dollars and cents?

A. The church is as valuable to us now as it ever was if this ordinance was not enforced, but if it will be enforced, as to our design in erecting a building of that kind, it will not be worth as much to us.

Q. Did anybody try to buy your church in the last six months or more?

A. No, sir.

Q. Did anybody offer you a price for it?

A. No, sir.

Q. Or to anybody connected with your church?

A. No, sir.

Q. To whom would an offer be made if your church was to be purchased?

A. To the trustees of the church.

Q. If any such offer was made to them would they let you know?

A. Undoubtedly.

105 Q. So that you are satisfied that nobody ever tried to buy your church?

A. Yes, sir.

Q. Do you think you could get what your church cost you now?

A. We are not inquiring for that; haven't given it any consideration at all.

Q. You have not?

A. No, sir.

Q. How many people have you in your congregation, — you say?

A. Well, I guess we have a membership now of three hundred and odd.

Q. And you had before this thing about one hundred and fifty more, you say?

A. Oh, yes, sir; we used to have about four hundred to four hundred and fifty.

Q. Do you know the church on Franklin or Liberty street, colored church?

A. The Central church?

Q. The Central church.

A. Yes, sir.

Q. That has been in the old tenderloin district for a number of years, hasn't it?

A. I guess so.
Q. Do you know how many people go to that church?
A. No, sir.
Q. These new limits leave that district out?
A. I suppose so.
Q. What denomination is that church, do you know?
106 A. Yes, sir; Congregationalist, sir.
Q. That is not a Methodist church?
A. No, sir.

By the COURT:

Q. Do you know anything about the history of that church?
A. No, sir.

By Mr. MCLAUGHLIN:

Q. How many churches of all denominations are there in this new tenderloin district?
A. One.
Q. This is the only church—yours?
A. Yes, sir.
Q. How many are there in the old tenderloin district?
A. I am unable to say. I never thought that matter out. I didn't make that my business.
Q. Well, do you know? Are you familiar with the city?
A. Yes, sir, somewhat; but I have never given that a study.
Q. You don't know anything about that? We will take the district from Poydras to St. Louis and from Basin to Claiborne. You know that district, don't you?
A. From Poydras to St. Louis?
Q. Yes; and from Basin to Claiborne.
A. Yes, sir.
Q. Now, are there more churches in that district than there are in this present tenderloin district?
A. Yes, sir; I might say there are.
Q. Well, won't you say, without being might?
A. Yes, sir.
107 Q. Great many more?
A. I couldn't say a great many.
Q. You can name three times as many; you can name three churches in the old districts, can't you?
A. I don't think I can really point out but two to my knowing.
Q. You don't know of any churches out on Common street, a colored Catholic church?
A. No.
Q. You know that there are more churches in the old district than in the new district?
A. I think I know of two churches in the old limits.
Q. That is all that you can remember?
A. Yes, sir.
Q. Do you know whether there are more schools in the old limits than the new?

A. No, sir; I do not.

Q. You are not very well acquainted, then, with the district near your church?

A. I am acquainted with the district near my church.

Q. But that is all?

A. But the old limits, I am not very well acquainted with that, as far as hunting up the school-houses and churches is concerned.

Q. How long have you been a minister of the Methodist Episcopal Church?

A. About eleven years.

Q. Has your congregation spread all over the city?

A. Yes, sir.

108 Q. From Carrollton to the Barracks?

A. Yes, sir.

Q. You visit all over the city?

A. Yes, sir.

Q. How many of your congregation live in this tenderloin district?

A. There are not many of them now, because they had to get out.

Q. Well, up to last year?

A. A good number.

Q. More than half?

A. Yes, sir; about.

Q. About half?

A. Yes, sir.

Q. The greater portion did not live uptown?

A. Well, out and in.

Q. Let me get it straight. This district is a district bounded by Robertson, St. Louis, Custom-house, and Basin streets. Did the most of your congregation live in that district a year ago?

A. No, sir. A good number lived in it.

Q. Most of them lived out of it?

A. A large portion lived on the outside and some lived on the inside.

Q. And you have been pastor there two years?

A. Yes, sir.

Q. Where were you pastor before?

A. I was up on Valence street between Camp and Chestnut.

109 STEVE CIOLINA sworn and examined on behalf of plaintiff and intervenors.

Direct examination.

By Mr. MCCALEB:

Q. Mr. Ciolina, are you acquainted with what is known as the new limits for lewd women between Custom-house, St. Louis, Basin, and Robertson streets?

A. Yes, sir.

Q. Do you know the respectable people living in that area?

A. I know lots of them.

Q. Tell us who you know, and who they are, and where they live.

A. I have got a list here (producing list referred to). In the first start off, there is one living—I believe her name is Mrs. Leroy—on St. Louis between Treme and Franklin, right next door to the corner of Treme and St. Louis, in the same square as Mr. L'Hote. Her husband—she has been there for fifteen years—her husband, I believe, is in the employ of Mr. L'Hote, but in what capacity I don't know. They are respectable people. Next door there is an Italian. His wife and family lived in there for twelve years.

Q. Respectable people?

A. Respectable people. On the opposite corner—I can't think of the lady's name; she is a widow; they own real estate in that neighborhood; keep a grocery. Right next door to her is a man named Miller or Mueller, a shoemaker. He has lived there for twenty years; has a wife and daughter; daughter married.
110 They have grandchildren. Mrs. Bode lives on St. Louis between Villere and Robertson, with her son Ed.; he was a clerk. Mrs. Ryan lives on St. Louis between Robertson and Villere, right next door to Mauberret's bath-house. Mr. Mauberret has a bath-house there as long as I can remember. His sister lived there with him at one time. I don't know whether she is residing there now or not. Mr. Shoemaker, with his wife and family, lives on St. Louis between Marais and Treme. They are respectable people. Widow Doyle lives on St. Louis between Marais and Villere; lived there twenty years; still there; respectable. Mr. Waters, second recorder's affidavit clerk, resides there with his mother and family, and keeps a grocery and bar-room; residing there for about four years. Mrs. Rockedge, a widow, blacksmith, has been there for twenty-five years on Custom-house between Villere and Marais, about the center of the block, on the same side as Pat. Egan; raised a family of children and has grandchildren. Right next door is Mrs. McLean, formerly Mrs. John Hennen. She is a widow. She still resides there. There is an Italian who keeps a fruit stand in one of our houses; married, got a family. Mr. Spangler, a barber, Custom-house and Marais, rented his place out for a bar-room; moved his family; moved to the next corner, Marais and Canal; has three or four daughters. Charley Legendre lives on Bienville between Marais and Villere; lived there for thirty years; his mother was conducting a saddlery establishment; was compelled to move out to make room for others. He lives now on Marais between Bienville and Custom-house. Right next door to Mr. Legendre's place is
111 Mr. Thomas, on Marais between Bienville and Custom-house. He is employed as a stage carpenter in one of the theaters; has a wife and family. Mr. Oberle—Mr. Thomas owns his own property—Mr. Oberle, corner of Conti and Marais, married; been there for fifteen years. Mrs. Vigers, the mother or sister-in-law of Policeman Vigers, lived there for twenty years. Mrs. Kelsko, right next door, whose daughter is employed as book-keeper for Mr. Sassinot, the hardware store, had to move from the neighborhood, and

is now living on Dumaine near Broad. John Baron owns *their* own property on Custom-house between Treme and Marais; been there fifteen years—wife and family. Rheinhardt Martin, who owns five or six properties, keeps a grocery and bar-room at the corner of Conti and Villere; has a family of grown children. He has been there for twenty-five years. The Holbrook family—he conducted a bakery—been there for twenty-five years. His successor, Louis Zenner, is now conducting the business; married. I believe there is eight or nine daughters, children and grandchildren, in the family.

Q. He is at 408 North Villere?

A. On Villere street, in the new tenderloin district. Mrs. Volkman, corner of Conti and Marais, had a place rented for a drug store; burnt out; refused time and again to rent it for a house of prostitution and bar-room; was compelled to move from the neighborhood. Mr. Turner, baker, on Bienville between Liberty and Franklin, with a family of daughters, lived there fifteen years; owns property. Mrs. Caserta built a property about two years ago on Bienville between Franklin and Liberty; owns her own house. At the corner of Bienville and Franklin a party by the name of
112 Barrenger—if I remember correctly, a widow—conducts a bar-room and grocery; has daughters. Charles Aime conducts a coffee-house on Custom-house street; offers to sell his place because the rent was raised from thirty-five to ninety dollars, and refuses to rent the upper portion of his house for a house of prostitution; wishes to sell on account of his family—to move out of the neighborhood. That is about all that I can remember.

Q. These are all reputable people?

A. All reputable. Mrs. Larouge, at the corner of Custom-house and Marais, sold out three months ago. She had lived there ten years or more; she was compelled to sell out on account of the neighborhood; that was her excuse. Mr. Tournier, on the opposite corner, living there some years, has two sisters; is conducting the business of grocery and bar; owns his own property. Mr. Carbajal was living a couple months back at the corner of Custom-house and Villere. I guess the neighborhood got too tough, and he went off to Marais near Canal.

By Mr. McLAUGHLIN:

Q. That is Mr. N. G. Carbajal?

A. Nick Carbajal.

Q. That is not the one in this case?

A. No, sir; in fact, I don't know the other one.

By Mr. McCALEB:

Q. That is your census?

A. Yes, sir; that is my census.

Cross-examination.

By Mr. McLAUGHLIN:

113 Q. Now, Mr. Ciolina, you say Mr. Turner, the baker, is a respectable man?

A. Yes, sir.

Q. Now, he owns four houses on Bienville street. Who occupies those houses?

A. I don't know who occupies those houses.

Q. Do you know the character of the people who rent it?

A. I know Mr. Turner to be a respectable man. I don't know anything about the houses.

Q. Mr. Zenner, he owns some property on St. Louis street?

A. No, sir; not on St. Louis. I know the Hollerbach estate does.

Q. Well, he is interested in the Hollerbach estate, ain't he?

A. I don't know; his wife is one of the heirs.

Q. He is interested in that property as one of the heirs?

A. Yes, sir; I guess his wife is.

Q. Do you know the character of the occupants of that property?

A. I know that that property has been up to lately—they own the whole front from the bakery up to the corner. It was always continually occupied by respectable people. There is now an old Italian, whose husband was killed during that great storm here, living there with her little children—I believe daughters. Mr. Jemanhart rented one of the places for a barber shop. He was a respectable person. The other tenants I don't know, but they were respectable people.

Q. Do you know who lives in the houses on St. Louis street now owned by the Hollerbach estate?

114 A. I don't know.

Q. Do you know who lives now in the houses on St. Louis street owned by Ernest Stolz?

A. I don't know Ernest Stolz. Does he live in that neighborhood?

Q. He lives on Esplanade street.

A. I don't know.

Q. Do you know that Nick Carbajal owns some property in that neighborhood?

A. I know he owns some property in that neighborhood.

Q. Do you know who occupies those houses?

A. No, sir; I know he occupied one, and I have always known him to be respectable.

Q. Do you know the property he owns?

A. I don't know where that are at, but I know he owns property in that district, a heap of it, and also Pat. Egan.

Q. Do you know the character of the people who occupy Pat. Egan's property?

A. No, sir; if you ask me about the character of people I am telling you about I can tell you. I can't give you information about people occupying these other houses. There is a lot of new tenants there.

Q. I will ask you about people living there for a long time. Do you know Mrs. Noyse?

A. No, sir; I do not. I see the name on the door.

Q. Do you know a house back of Mr. L'Hote's on Franklin and St. Louis, or St. Louis between Franklin and Treme, that

115 was once occupied by Mrs. Noyse?

A. Where was that?

Q. On St. Louis between Franklin and Treme.

A. I know that neighborhood well; pass there twice a day almost.

Q. It is owned by Mrs. Donally?

A. I don't know. I heard this lady say she owned it.

Q. What is the character of that house?

A. The last party I noticed in there was a party that was keeping a bar-room, a respectable man, I don't know his name.

Q. Well, the place next door to it?

A. If I ain't mistaken, I think he was a relative to Mr. L'Hote.

Q. The one next door to the bar-room?

A. Oh, that was a woman by the name of Rosa. That is all the name I knew her by. She was a dressmaker. I know Rosa kept there, and she was a dressmaker. I know her to be a dressmaker.

Q. You heard Mrs. Donally's testimony this morning?

A. Yes, sir.

Q. You heard her testify here that she owned that house and it was occupied by people of bad reputation for twelve years?

A. I know she didn't tell the truth, because this gentleman I spoke of lived in her house and had his family there, and was respectable, and lived there while she said she owned it.

Q. When did he live there?

A. Inside of the last ten years.

Q. Did he live there in the last seven years?

A. Yes, sir, about; this side of ten years; it may be seven

116 years, six years, five years.

Q. Do you know who lives in the house now?

A. In the house now?

Q. Yes.

A. Well, I will tell you. I happened to go into a place the other night——

By the COURT: Never mind going into details. Can't you just say yes or no?

A. I have met a lady who said she was run out of there by the police.

By Mr. MCLAUGHLIN:

Q. Well, I am asking you do you know who lives in that house of Mrs. Danally's now.

A. I don't know.

Q. Do you know who lived in it last year?

A. No.

Q. Do you know who lived in it the year before last?

A. No.

Q. What is the last time you remember knowing anybody living in that house?

A. In that house—the last party I took any notice of was this gentleman who kept this bar-room, this lady that lived next to the corner of Treme and St. Louis street, who had been living there for about fifteen years, and this Italian I spoke of. When I go by there in the morning I see people going in and out. Of
117 course, I don't know their character. These people I come in contact with I can speak about them.

Q. So the only people you know in this district are the respectable people, whose names you have mentioned?

A. I know a few not respectable.

Q. Do you know anybody not respectable living in that district?

A. Yes, sir.

Q. Do you know anybody not respectable living in there more than a year?

A. I do.

Q. Do you know many of them?

A. A few, not what you call many.

Q. Was it a very respectable neighborhood before—the general character?

A. The general character was—well, about five hundred per cent. better than it is now.

Q. Well, we want to know whether it is a respectable neighborhood.

A. Well, it is as respectable as Royal street now.

Q. Were there many people of bad character living in that neighborhood more than a year ago?

A. No more than on Royal or Bourbon street.

Q. Well, are there many people of bad character living on Royal or Bourbon street now?

A. Some.

Q. Well, are there as many in this district?

A. Not as many as on Royal or Bourbon.

Q. But there were many?

118 A. There were not. There was a lot of hard-working people.

Q. Mr. Ciolina, you know well enough what I am asking you.

A. The majority were respectable people, if that is what you want to know.

Q. The majority?

A. Yes, sir.

Q. Were there enough disreputable people to make it noticeable?

A. No, sir.

Q. They were not?

A. No, sir.

Q. Now, do you know the block on St. Louis between Marais and Treme?

A. Yes, sir.

Q. Do you know that place where a man was killed some years ago—a colored man?

A. A man killed?

Q. Yes.

A. I know where there was a woman killed by Morris, on St. Louis near Robertson, on the new tenderloin side.

Q. That was between Robertson and Villere?

A. Yes, sir.

Q. I am speaking about between Marais and Treme. There was a house—was there a house kept by an old colored man named Dad? You knew Dad?

A. No, sir.

Q. You didn't know him?

A. No, sir.

119 Q. You know the neighborhood?

A. Yes, sir.

Q. Do you know whether there was any such house or not?

A. Where a man was killed? I don't remember about a man being killed.

Q. You don't know whether there was an assignation-house on that block more than a year ago?

A. Where?

Q. On that block.

A. Where?

Q. On St. Louis between Marais and Treme.

A. Between Marais and Treme; yes, sir.

Q. How many were there?

A. Well, there was two.

Q. Two?

A. One kept by a woman by the name of Jackson—she owned her own property—and the other was on St. Louis, near the corner of Liberty.

Q. Now, did you know any of them on St. Louis from Marais to Villere?

A. On St. Louis between Marais and Villere?

Q. Yes.

A. On that side?

Q. On the street.

A. On the opposite side?

Q. On both sides.

A. On that side I did know one woman. On the other 120 side all are respectable, because I can almost name them. There is Walker; there is Schumaker; there is Widow Brown. Right next door a house stands back in the yard. The property formerly belonged to a man who was an engineer in the brewery. The Gemenhart family lived on the corner. On the opposite side there was one woman lived there that I know of; there might have been others that I didn't know. That is all that I know of it.

Q. So that there might have been other people in these streets that you didn't know?

A. Yes, sir.

Q. The testimony that you gave here don't cover all the people?

A. I know the majority of people that lives on St. Louis street; if I don't know them by name, I know them by sight.

Q. And the majority of people on St. Louis street were——

A. Were good people, the people that were living in the houses there.

Q. You know that?

A. Yes, sir.

Q. On St. Louis street, from Franklin, or from Basin street back to Robertson?

A. From Basin street back to Robertson.

Q. You are positive that there were——

A. More respectable people living there; three to one.

Q. Then the chief of police's report, if it shows to the contrary, was wrong?

A. Yes, sir.

Q. Just like Mrs. Donally was wrong?

121 A. Yes, sir.

Q. What is your occupation?

A. I am now employed in the conveyance office.

Q. What were you doing before that?

A. I was in the tax collector's office, where I was placed in contact with everybody in that neighborhood, being in the second district collecting licenses and collecting their taxes, and in fact a heap of people in that neighborhood I used to pay taxes for, and before that I was in the criminal court for four years.

Q. You were in the criminal court for four years?

A. Yes, sir.

Q. In what capacity were you employed there?

A. I was employed there as clerk, making out jury notices and notices for witnesses, and so on.

Q. Do you know Mrs. Gallagher?

A. Mrs. Gallagher?

Q. Yes.

A. Yes, sir.

Q. Do you know who occupies the other half of her house?

A. No, sir; Mrs. Gallagher has been there twenty-five or thirty years, as long as I can remember.

Q. You don't know who occupies the other half of the house?

A. No, sir; I don't come that way. I cross Villere bridge and come by St. Louis.

Q. Well, she is on St. Louis street, between Villere and Robertson.

A. I know she is.

122 Q. Do you know where Mr. L'Hote's house is?

A. Yes, sir.

Q. Do you know anything about the values of property out there, whether they have increased or not since this ordinance was passed?

A. They have increased, while on the other side they have diminished.

Q. Do you know that colored church on Bienville street?

A. Yes, sir.

Q. Do you know who lives in that nighborhood now, generally? I don't want the names.

A. I know—well, about two places.

Q. Do you know Mary Jackson?

A. No, sir; she is a newcomer.

Q. Sir?

A. She is a newcomer.

Q. Then you don't know the people——

A. I am talking about respectable people. The newcomers from the other districts I don't know.

Q. I thought you were an expert on that?

A. No, sir; Mr. Shipley can tell you better on that. He is keeping the census on that, and I am keeping the census on respectable people.

Q. So Mr. Shipley's report is more correct about that than you are? You don't know about that?

A. I don't know, because I ain't keeping the census of the disreputable people.

123 R. C. METOYER sworn and examined on behalf of plaintiff and intervenors.

Direct examination.

By Mr. McCALEB:

Q. Mr. Metoyer, are you in any way connected with the—with what is known as the chapel, the Methodist Episcopal chapel?

A. I hold my membership there.

Q. How long have you been a member of that congregation?

A. Since 1886.

Q. What was the class of people residing in what is known as the new limits for lewd women prior to the passage of this ordinance?

A. It was a very respectable district. The class of people were laboring people, but respectable.

Q. About what percentage or proportion of the church membership there lived in that district?

A. I should judge about one-third.

Q. Numbering about how many?

A. About one hundred and twenty-five.

Q. Now, since the passage of the ordinance complained of in these petitions, what change has taken place in the population of those limits?

A. The respectable element, with some exceptions, now have been driven out.

Q. About how many lewd women do you think have come into that area between Custom-house, St. Louis, Robertson, and Basin streets?

A. I should approximate about four hundred now, if not more.

124 Q. Do you know the general character of the houses in that district?

A. I have resided in that immediate vicinity since 1872. I do.

Q. Now, are there a sufficient number of vacant properties there to accommodate, say, a thousand or fifteen hundred more of this class of women—property which could be obtained by them to live in?

A. No, sir; for this reason, that a great many tenants still reside there, a great many property-owners that I know who live in their own properties. The district is now congested.

Q. The district now is full, you say?

A. Yes, sir.

Q. And then all these people haven't gone there?

A. No, sir.

Q. Something has been said about selling this church. Has there been any offer to sell this property?

A. As a member of the local board of the Church Extension Society, which is advisory in its nature, I know there has never been any proposition made to us.

Q. To buy?

A. To buy, or any proposition made from us to sell. I might state, however, that in opposing some bar-room permit and concert halls before the public order committee some man, his name I forget, wrote a letter to the public order committee saying that some one representing the church had placed the building in his hands for sale. I objected to the letter at the time, and the committee issued
125 a subpœna for this man. At its subsequent meeting he failed to put in an appearance, and assigned as his reason that since some one had promised him seventy-five dollars to testify to this fact and hadn't paid it he wouldn't come up before the committee.

Q. Do you know that man's name?

A. I can't recall it just now.

No cross-examination.

By Mr. McCaleb: We now call upon the City of New Orleans to produce the petitions and protests of persons against the passage and for the modification or repeal of the ordinances complained of in the petition—the protests spoken of by the witnesses on the stand.

By Mr. McLaughlin: To which the city responds that search is now being made for those papers; that the moment they are discovered they will be produced and turned over to the plaintiff's counsel, or if we can't find the originals we will furnish copies or furnish any extracts from the minutes or publications showing the nature of the petitions.

(Plaintiff and intervenors rest here.)

Civil District Court, Division B.

GEORGE L'HOTE
vs.
CITY OF NEW ORLEANS. } No. 54533.

Testimony on Behalf of Defendant, Taken in Open Court, Hon. Fred D. King Presiding, on Wednesday, December 21st, 1897.

126 Appearances: E. Howard McCaleb, Esq., for plaintiff and for B. G. Carbajal, intervenor; R. C. Metoyer for the Union Methodist Episcopal Church; J. J. McLaughlin, Esq., for the city of New Orleans.

Witnesses:

D. S. Gaster,	p. 126.
Sergt. Gabriel Porteous,	140.
Officer T. Shipley,	143.
Mrs. M. Donally,	152.
Victor Happy,	156.

D. S. GASTER sworn and examined on behalf of defendant.

Direct examination.

By Mr. MCLAUGHLIN:

Q. Mr. Gaster, you are the superintendent of police?

A. Yes, sir.

Q. You made this report of the houses in that neighborhood near Mr. L'Hote, did you not? (Document referred to shown to witness.)

A. Yes, sir; I had this made by the commanding officer.

Q. That is a correct report?

A. I believe so.

Q. Now, do you know the character of the neighborhood around Mr. L'Hote's house, on Treme near St. Louis?

127 A. Yes. sir. On St. Louis street?

Q. On St. Louis street.

A. Yes, sir.

Q. What is the character of that neighborhood?

A. Well, there has always been some disorderly houses there in that vicinity on St. Louis street.

Q. How long a period has that character of houses continued there?

A. There has always been some assignation-houses on that street ever since I have known anything about that street.

Q. That is fifteen or twenty years?

A. Yes, sir.

Q. Do you know how many women of this character there are in the city; can you approximate?

A. About fifteen hundred prostitutes.

Q. Do you know how many houses there are in this new district?

A. I think there is three hundred and sixty; I think it is.

Q. Have you an official report of that; was there one made out?

A. There was one made out, and I forwarded it to the mayor's office.

Q. You can get us a copy of that, can't you?

A. Yes, sir.

Q. Now, the old limits prior to the adoption of these ordinances 13032 and 13485, what was the character of the neighborhood or the district which was included in the old limits?

A. Well, on Burgundy street there were at one time fifty-
128 two houses of prostitution on that street, and the complaints were continual. On Custom-house there was a great many between Dauphine and Rampart; also on Bienville street. For some years they had been moved off of Conti and St. Louis street. On Gravier street they used to be a great many, but they have been removed from there. Complaints were very frequent about them in that vicinity; also on Basin street between Poydras and Canal—between Perdido and Canal—and there was complaints about Gasquet and Liberty street; Gasquet and Liberty street particularly.

Q. Did you have anything to do with the change of these limits, in making any recommendations as to streets?

A. No, sir; the council committee came and asked me to walk around the streets with them where they proposed to put them.

Q. And they walked around with you?

A. Yes, sir; and they looked around the territory which they proposed to make a district of.

Q. Of the two districts, the old district and the district fixed by these two ordinances, which one has the most valuable property in it—the more valuable property—and which one has the more residences or stores or places where respectable people frequent?

A. Well, the old limit was from the north side of Poydras to the south side of St. Louis—from Claiborne to the river. That would take in a great deal of valuable property and stores.

Q. It left out Canal street, though?

129 A. Yes, sir.

By Mr. McCaleb:

Q. It left out Canal, left out Rampart, and left out Royal?

A. Well, recently, it has left out St. Louis, Conti, and Dauphine, too, and Bourbon; that is a thing of the last few years, that ordinance.

By Mr. McLaughlin:

Q. That was from Claiborne street to the river, the old limits?

A. That used to be considered the limits for houses of prostitution.

By Mr. McCaleb:

Q. And from Poydras to St. Louis?

A. Yes, sir; from the north side of Poydras to the south side of St. Louis. They were permitted on one side of St. Louis street.

By Mr. McLAUGHLIN:

Q. Those limits contained a great many churches?
A. Yes, sir.
Q. Schools?
A. Yes, sir.
Q. Stores?
A. Yes, sir.
Q. Respectable people living in that neighborhood, numbers of them?
A. A great many of them.
Q. How does it compare with the neighborhood fixed in the present ordinance, as far as insuring the peace, sobriety, and good name of the city is concerned?
130 A. You ask me for my opinion?
Q. Yes, sir; that is what we are trying to get.
A. The district it is proposed to put them in does less harm than in the other district, and is less likely to have complaints from that class of people.

Cross-examination.

By Mr. McCALEB:

Q. Now, Chief, you say there are about fifteen hundred public prostitutes in the city?
A. Registered; yes, sir.
Q. About how many frequenters are there of assignation-houses and persons who don't reside in houses of prostitution, but ply their avocation as prostitutes?
A. Well, I imagine there is—we had about—up to a certain time—about sixty registered assignation-houses and about one hundred doubtful, furnished-room houses.
Q. And how many houses of prostitution?
A. Two hundred and five, sometimes two hundred and twenty, two hundred and thirty. It has been that way for several years, the average being two hundred and five, the least I have ever seen.
Q. Now, besides the registered prostitutes who live in houses of prostitution, how many are there of these women who live by prostitution, frequenters of assignation-houses?
A. Well, in the reports we get of assignation-houses they don't give the names of the visitors there.
Q. I know; but the numbers?
A. Well, a fair average would be about five to each.
131 Q. Five to each house?
A. Yes, sir.
Q. And you said there were sixty, I think?
A. Yes, sir; from fifty-six to sixty we have registered. There were some broken up within the last year or so.
Q. That would make about three hundred?
A. Two hundred and eighty to three hundred; yes, sir.

Q. How many houses did you say were inside of these new limits?

A. About three hundred and sixty. I think it was three hundred and fifty-eight or sixty houses, besides some vacant lots reported.

Q. Now, are most of these houses one-story houses?

A. Most of them in the new district are one-story houses.

Q. You don't allow these prostitutes to live in one-story houses, do you?

A. Outside of the limits, no.

Q. And these one-story houses, are they not contracted? I mean by that haven't they got but very few rooms—two, three, four, or five rooms?

A. Yes, sir; generally double cottages, with two or three rooms on each side.

Q. Now, isn't it a fact, Chief, that when a locality or a house becomes infected by the occupancy of lewd women that it ceases to be fit for any other purpose?

A. Yes, sir.

Q. For instance, a house that is—I will ask you how long have you known, for instance, the old limits on Custom-house street and Basin street and these other streets that you have mentioned,

132 how long have you known those streets to be the resort of prostitutes?

A. Well, Basin street and Custom-house street, back of Basin street, so long as I can remember, have always been infested with houses of prostitution. Now, in front of Rampart street they have been on the increase there within the last fifteen years.

Q. Has the number of prostitutes and prostitution increased in this city with the increase of population or has it diminished? You have been here twenty-five or thirty years?

A. Over thirty years.

Q. So have I. Has it increased or diminished within that period of time?

A. I have noticed that there was less transient prostitutes here within the last fifteen years than there was formerly.

Q. There are fewer transient ones; but as to the numbers I am talking about, has there been an increase or diminution?

A. There are more prostitutes that visit houses of assignation in recent years than there was formerly.

Q. Now, you said there were three hundred residences in those new limits?

A. Three hundred and sixty I think.

Q. Three hundred and sixty?

A. In the whole district.

Q. Does that include groceries, bar-rooms?

A. Every building in the district.

Q. Every building in the district?

A. Yes, sir.

133 Q. Now, how many groceries and bar-rooms are there in that district?

A. I don't know. I know there is a great many bar-rooms and groceries, bar-rooms particularly, in that district.

Q. Now, isn't it a fact, Chief, that there are no prostitutes in the old limits residing adjacent to any church? You don't know, do you?

A. In the old districts; yes, sir; on Gasquet and Franklin streets.

Q. Is there a church out there?

A. Yes, sir.

Q. Gasquet and Franklin or Gasquet and Liberty?

A. Gasquet and Liberty I mean; yes, sir.

Q. Now, that is the only place you know where there was any lewd women residing in the vicinage of a church in the old district?

A. There was some on Gravier and on Common street that we removed; several different parties, between Baronne and Rampart and between Basin and Claiborne, and some near a church on Common and Derbigny street, in that vicinity.

Q. Don't the reports filed in your office show the names of the owners of any of these houses in the new limits?

A. Either the owner of the houses or the agent.

Q. And also the character of the house?

A. Yes, sir; it says one-story or two-story house, house of prostitution or assignation, occupied by so and so, agent so and so; gives the number or address of the owner or agent.

134 Q. Has Mr. L'Hote applied to you to remove or arrest any of these prostitutes in his vicinity?

A. Yes, sir.

Q. When?

A. Often. There was one on Treme street that once or twice he has complained to me about, and on St. Louis street.

Q. What did you do about it?

A. I had the proper action taken against them.

Q. Now, isn't it easier for your force to police these localities frequented by prostitutes and houses of prostitution when they are nearer to your headquarters?

A. In some instances it would be easier.

Q. There has never been anything like a riot to occur down in this place—in this neighborhood?

A. No; sometimes they have a little free fight around those vicinities.

Q. Are there not private families living in the new limits, in the three hundred houses referred to by you?

A. I presume there is.

Q. About how many?

A. I don't know.

Q. You have given notices to these prostitutes in the old limits to move into the new, haven't you?

A. Yes, sir.

Q. You have repeated those notices recently, haven't you?

A. Yes, sir.

Q. Within what length of time?

A. Well, some of them fifteen days, twenty days, and thirty days.

135 Q. Ago?

A. All up to the first of January.

Q. All up to the first of January?

A. Yes, sir.

Q. And you have given these notices since the injunction in this case was served on you?

A. Yes, sir.

Q. Now, by whose direction did you give those notices?

A. By direction of the mayor, under the old ordinance 13032.

Q. 13032?

A. 13032, I think it is. That left out St. Louis street.

Q. That left out St. Louis street?

A. Yes, sir.

Q. Now, when these women comply with your notice they move inside of these new limits?

A. Yes, sir.

Q. And that is the reason your report shows there are so many immigrants into the new limits?

A. Yes, sir.

Q. Your notice to them is to move into the new limits?

A. We send them first a verbal notice, telling them the ordinance is against their living where they are living at and they are required to move in this new limits, and if they don't comply with the verbal notice we serve a written notice on them, signed by the mayor.

Q. Now, what has been the character of these new limits a year or two past?

A. Well, there always has been some houses of prostitution

136 and some assignation-houses within that territory.

Q. Weren't there a large number of the population in those limits working people who resided there with their family?

A. There were some; yes, sir.

Q. And people engaged in ordinary avocations, such as grocery stores and bakeries?

A. I was going to say that I suppose it wouldn't be out of place to say that I never received any complaints from any persons in the new limits except Mr. L'Hote, this gentleman sitting beside you. There was some other person wrote me about Bienville street.

Q. Don't you know that there is houses of assignation on either side of a public school in these new limits at present?

A. The new limits, you say?

Q. Yes; isn't there a public school out there?

A. Yes, sir; corner of Robertson and Bienville.

Q. Corner of Robertson and Bienville?

A. Yes, sir.

Q. Isn't there a house of assignation or prostitution on either side or both sides of this school?

A. On both sides of Robertson street, no; on the river side, yes.

Q. How long has that been established there?

A. Well, there is one house I never heard of until last winter. There is one that has been there a long time, between Custom-house and Bienville.

Q. Now, don't you know that there have been prosti-
137 tutes and houses of prostitution located in the vicinity of this church out on Bienville street, in the new limits, recently?

A. Yes, sir.

Q. A number of them?

A. I walked along there not long ago and saw them there; yes sir.

Q. Do you know who occupy the house on this side or the river side of the church—on the Villere Street side?

A. No; I do not. I noticed a house there very well lit up lately. I didn't see any sign on the door or anything.

Q. Didn't one officer—didn't one of your officers, John Thiel, who belonged to the police force, live there previously?

A. Yes, sir; he lived there in that house.

Q. For a number of years?

A. I know he lived there before he died; yes, sir.

Q. Do you know of any concert saloons which were authorized to be operated in the old limits next to any church?

A. No.

Q. Did you ever hear of such a thing?

A. No, sir.

Q. Well, hasn't that been done inside of these new limits next to this church recently by one Clinger?

A. No. There is a saloon on the corner; I have forgot who keeps it. He received a permit to have a piano in his place for his guests. He had a restaurant there. They were not permitted to have professional musicians.

Q. Don't you know that they reported favorably lately on the petition of one Clinger to establish a hall on Bienville street—
138 a concert hall?

A. No, sir; I saw it reported in the paper. I didn't know it was reported favorably.

Q. There are four cemeteries in these new limits, are there not?

A. There are cemeteries on Robertson and on Claiborne from Custom-house to St. Louis, I believe, and then there is one cemetery bounded by St. Louis, Conti, Treme, and Basin streets; about four blocks occupied by cemeteries.

Q. That takes out about four blocks out of this nineteen blocks?

A. Three blocks is outside of the limits.

Q. There is about four blocks taken out of the nineteen?

A. No; one cemetery, bounded by Conti, St. Louis, Treme, and Basin streets, occupies an entire square in the limits, and these cemeteries on Robertson street go through to Claiborne street. They are not within the limits.

Q. How are they usually approached for funeral purposes?

A. By St. Louis, by Bienville, and Conti street, and the one on St. Louis and Basin is approached by Basin street.

Q. Will your report show the number of residences in these new limits and the size of them, whether they are one or two stories?

A. It shows the number of houses.

Q. And whether they are one or two stories?

A. Yes, sir.

Q. And how many rooms?

A. We only make a report of houses of prostitution and assignation; that is all the report will show. I think the report we made showed the size of the houses; that is my impression;
139 yes, sir. That report is either in the mayor's office or the committee has it. They sent for it.

Q. Don't you know that a large majority of the property-holders in the old limits objected to this change?

A. Yes, sir; some of the property-holders on Custom-house street and Burgundy street objected to it, and some of them on Gasquet street, Robertson street, Liberty street.

By Mr. McLAUGHLIN:

Q. Chief, you have been for a long time a policeman on the force?

A. Yes, sir.

Q. Can you venture to give us an opinion as to whether the morality of the city is improved or injured by this change from the old limits to the new limits?

By Mr. McCALEB: I object to that, because that is an untried horse that we haven't rode yet. That is mere prophecy. I am perfectly willing for the chief to tell anything he knows, but I don't want him to prophecy for the future.

By the COURT: I do not consider that this court is called upon to decide the question as to whether or not the morality or immorality of the city is to be improved or not by the proposed change. That is a matter for the legislative branch of the city government. It seems to me the only question here is whether the city has the power to make the change, irrespective of the question of morality or immorality. For these reasons the objection is sustained.

140 By Mr. McLAUGHLIN: I reserve a bill.

Q. From the character of the population, improvements, and business conducted and going on and situated in the two districts, which district is better adapted for the purposes of the ordinance, the old or the new?

A. The proposed new district.

Sergeant GABRIEL PORTEOUS sworn and examined on behalf of defendant.

Direct examination.

By Mr. McLAUGHLIN:

Q. Sergeant, you are in command of the precinct that includes these limits—St. Louis street?

A. Yes, sir.

Q. How long have you commanded that precinct?

A. Since the first day of June, sir, up to the present date.

Q. Now, these reports that we have been looking over were made under your supervision?

A. Yes, sir; made by Corporal O'Neil and Officer Shipley.

Q. And they are correct?

A. Yes, sir.

Q. Now, this house, Mr. L'Hote's residence, on Treme, between St. Louis and Toulouse, 520 and 522 Treme—do you know any house of ill-repute in that neighborhood?

A. Yes, sir; Emma Smith's house, on Franklin and St.
141 Louis; also on St. Louis between Treme and Marais.

Q. How long have those houses been used for such purpose, to your knowledge?

A. For some time.

Q. For what time?

A. Ever since I have been in the precinct; going on seven months.

Q. Do you know anything before you went into the precinct?

A. No, sir; that was the first time I ever worked in the precinct.

Q. Do you know anything about the house near there? Mr. Carbajal claims to own some house there.

A. Yes, sir.

Q. Do you know who occupies this house of Mr. Carbajal?

A. No, sir; but I know there are houses of assignation and ill-repute there.

Q. Do you know anybody living in the house 1522 Bienville? Do you know Edward J. Dumoil?

A. Yes, sir.

Q. Do you know what kind of persons are there?

A. From what I can understand they are private families. I was there making inquiries about a party in that house.

Q. Do you know Joseph Page?

A. No, sir.

Q. He lives next door?

A. I don't know.

Q. Do you know who lives next door to Dumoil?

A. No, sir; I couldn't say.

142 Q. Do you know Alexander Scott?

A. No, sir.

Q. Do you know any such person living there?

A. No, sir.

By Mr. McCaleb:

Q. He died the other day?

A. I don't know, sir.

By Mr. McLaughlin:

Q. Do you know Arnold Dufochoux?

A. I know he lives somewhere there.

Q. You don't know where he lives?

A. No, sir.

Q. Is he a man of character?

A. Yes, sir; a hard-working person.

Q. What is the character of that neighborhood along Bienville street; what has been its character in the neighborhood of that colored church, as far back as your knowledge extends?

By Mr. McCaleb: I object to this testimony, inasmuch as he states that he has only been there seven months, and the character of that neighborhood has been produced by the inactment of the ordinances complained of, and that the city government can't take advantage of its own wrong, and by destroying the morality and virtue of a neighborhood and forcing a lot of prostitutes into that area, then prove the character of their own act.

(Question withdrawn.)

143 By Mr. McLaughlin:

Q. How far back can you remember the reputation of the neighborhood?

A. Only since I have been in command of that precinct.

Q. You were never in that precinct before?

A. No, sir.

Q. Never controlled or commanded there before?

A. No, sir.

Officer P. Shipley, sworn and examined on behalf of defendant.

Direct examination.

By Mr. McLaughlin:

Q. Now, Officer Shipley, you are in the precinct that covers these houses?

A. Yes, sir; that is my section.

Q. How long have you been there?

A. I have been there four months.

Q. Did you know anything about it before those four months?

A. Yes, sir; I was there before; about five years ago.

Q. Do you know anything about the houses in the vicinity of Mr. L'Hote's residence?

A. Yes, sir.

Q. Do you know of any houses of prostitution or assignation in that neighborhood?

A. Yes, sir.

Q. What are they?

144 A. There is three particularly down on that list.

Q. You made this list? (List referred to shown to witness.)

A. Yes, sir.

Q. How long have those houses been there?

A. To my knowledge, the Jackson house has been there since I can remember.

Q. That goes back five years?

A. Longer than that.

Q. How long?
A. About ten or twelve years that I know of.
Q. What is the character of that neighborhood around there?
A. It has always been a sporting neighborhood.
Q. Now, around this colored church, on Bienville street, what is the character of that neighborhood?
A. Well, there is good and bad along there—houses of prostitution and assignation.
Q. Do you know of any houses there owned by Mr. Carbajal, one of the parties in this suit?
A. Yes, sir.
Q. Do you know who occupies those houses?
A. Some respectable families. One is occupied by Mrs. Jackson and Stella Adams.
Q. Are they respectable?
A. No, sir.
Q. Are they living in houses owned by him?
A. Yes, sir.
Q. How long have they been in there?
145 A. About a month ago.
Q. Do you know in which Carbajal's houses they are living?
A. Yes, sir; the gentleman standing there.
Q. Which one?
A. That gentleman.
Q. This gentleman here?
A. Yes, sir; there is two Carbajals—two brothers.
Q. This gentleman?
A. Yes, sir.
Q. What is his name?
A. One is Nick; the other I don't remember his name.
Q. B. G.?
A. B. G.; that is right.
Q. This is Bernardo G. Carbajal?
A. Yes, sir.
Q. That is the man?
A. Yes, sir.
Q. That is the house they are living in?
A. Yes, sir.
Q. Where is that house?
A. On Bienville between Villere and Marais.
Q. Do you know who lived in there before?
A. When I took the census there was a colored family living in there. They moved.
Q. They moved out since?
A. Yes, sir.
Q. And those characters went in there as tenants since this suit was brought?
146 A. Yes, sir.
Q. Now, what is the general character of these limits named

by the new ordinance; what was its character before these new ordinances were passed?

A. There has always been sporting-houses and assignation-houses all through there. I have taken down the census.

Q. Haye you ever served in any other precincts in the city?

A. Yes, sir; first, third.

Q. Sir?

A. The first and third precincts I have served in.

Q. You know, then, the neighborhood which comprised the old limits?

A. Yes, sir.

Q. Which of the two limits had the most churches in—the old or the new?

A. The old limits.

Q. And more schools?

A. More schools.

Q. And the most respectable people, in respect to the population?

A. Yes, sir; the old.

Q. The old?

A. Yes, sir. I have worked on all those beats pretty near—Gasquet, Franklin, Poydras.

Cross-examination.

By Mr. McCaleb:

Q. You say you took the census down?

A. Yes, sir.

147 Q. When?

A. About last month.

Q. How many prostitutes did you find in those limits between Custom-house and St. Louis and from Basin to Robertson?

A. Well, I didn't exactly count them. I just took them down and turned them in nightly.

Q. Is that the sort of census you took; you couldn't tell how many there were?

A. I didn't count them. There were a good many houses in there going under repair. I didn't count them.

Q. How many respectable private families are there living in those limits?

A. A good many of them, sir; some on St. Louis street; some on Bienville street. There is a very few on Custom-house street; pretty near all of them moved from there.

Q. How many houses are there within those limits?

A. Well, I never counted them.

Q. How many of these houses are vacant at this time and for rent?

A. There is very few.

Q. Very few?

A. I don't think there is, but I know on my beat from Bienville, right now at present—from Bienville to Custom-house and Canal, that is my section—out on Bienville and Custom-house streets, I don't

think there is a house for rent except one, and that is on Bienville between Robertson and Villere; that is the only house, a
148 two-story house, that is vacant, that I know of.

Q. Is there sufficient room in the vacant, unoccupied houses for eighteen hundred prostitutes in that area at this time?

A. I am no judge of that. I couldn't say. I think it would crowd them up there.

Q. You can't say?

A. No, sir.

Q. Are there a large number of two-story houses there, or are the majority of the houses in that area one-story houses?

A. One-story; yes, sir.

Q. One-story houses?

A. The majority are one-story houses; yes, sir.

Q. Who occupied the house where Stella Adams is now at the time you took the census?

A. There was a colored family there.

Q. Wasn't his name Scott?

A. I don't remember.

Q. Didn't he die recently?

A. I don't know.

Q. Who did you take this census for—the United States Government?

A. No, sir; for the chief of police.

Q. Oh, for the chief of police?

A. Yes, sir; that is done quarterly.

Q. And this is the census you were talking about?

A. Yes, sir.

Q. This is what you called your census?

149 A. Yes, sir; that is what we call it, as a rule.

Q. That is the census you referred to?

A. That is a rule or census, as we call it. They call it among the police a rule. They give in it the number of houses of assignation and prostitution and the names.

Q. How long have you been on that beat?

A. I have been there now since about four months—five months.

Q. Has there been a very large influx of prostitutes into that area that I have mentioned between Custom-house, St. Louis, Basin, and Robertson streets within that time?

A. Well, they have been in there and out; they have been backward and forward.

Q. Backwards and forwards. You have them on the go pretty much?

A. They rented houses out there and moved, and generally come back. As long as they can stay there, they prefer to stay there.

Q. They prefer to be where they used to be?

A. Well, of course, they like to stay out there.

Q. They didn't go there of their own volition?

A. No, sir; I don't know. I don't think so.

Q. There was some little police coercion to persuade them to move out there?

A. I don't know. I wasn't in the precinct then.

Q. Don't you know that they have been notified since the institution of this suit and the service of the injunction in this case that if they didn't move into that area they would be arrested?

150 A. I don't know anything about it. I heard of it here; I didn't hear anything about it elsewhere.

Q. Who keeps the two-story house corner of Bienville and Villere?

A. That two-story house—it is a druggist there.

Q. Do you know his name?

A. No, sir; he occupies one-half of the house. The other side is occupied by a prostitute.

Q. Don't you know that that man had to move his family away because of these prostitutes coming in there under this new ordinance?

A. You are asking me my opinion?

Q. Isn't it a fact that his family has moved?

A. His family has moved. In this house next door to him there was prostitutes before ever he moved, since I have been there.

Q. Isn't there a house of prostitution on both sides of that colored school out there?

A. Yes, sir; surrounded by them.

Q. How long have those houses on each side of this colored school been established there?

A. One about thirteen years and one of them about eight or nine years. One of them was there since I can remember.

Q. State who it was you have known to be there for thirteen years.

A. Tillie Davis.

Q. And for nine years?

151 A. She has got a French name; I can't think of it.

Q. Do you pretend to say that they live right next door to the school?

A. I don't say right next door.

Q. When I ask you about houses adjacent to the school, why do you talk about a square off?

A. They ain't a square off; that is in the same square.

Q. I asked you about houses adjacent, next door to this school.

A. There is a house of assignation right next door, but I don't know the woman's name. It has been there since I took the census, before I took it, and in the old census. The house was burned down at one time.

Q. When was the old censes taken?

A. In the month of January.

Q. Who occupies the house on the southwest corner of Marais and Bienville streets?

A. A party named Kenner.

Q. At Marais and Bienville

A. Oh, Marais and Bienville, at the corner, there is a grocery there kept by a party.

Q. What is his name?

A. John Greek, I believe.

Q. Has he got his family there?

A. Yes, sir.

Q. Are they respectable people?

A. Yes, sir.

Q. Who lived at the corner of Villere and Custom-house streets four months ago?

A. Villere and Custom-house?

152 Q. Yes; four months ago.

A. I didn't pay attention. I know Pat Eagan lives around there.

Q. Do you know Mr. Nick Carbajal?

A. I do.

Q. Now, don't he live there?

A. Since I took down the census he lived on Marais street. I don't know where he lived before.

Q. Well, you stated that you knew this neighborhood for the last ten years?

A. Yes, sir; but I didn't pay attention to who lived in particular houses. I knew the houses of prostitution there was around there. I lived there myself eighteen years ago.

Redirect examination.

By Mr. McLAUGHLIN:

Q. Then you know as a general thing that there has been a nest of houses of prostitution there for more than ten years?

A. Oh, yes, sir. I lived there myself—lived there eighteen years ago, corner of Custom-house and Villere.

Mrs. M. DONALLY sworn and examined on behalf of defendant:

Direct examination.

By Mr. McLAUGHLIN:

Q. Mrs. Donally, do you know where Mr. L'Hote lives on Treme street?

A. Yes, sir.

153 Q. Do you own any property in that neighborhood?

A. Yes, sir; corner of Franklin and St. Louis; there is one on Franklin and one on St. Louis.

Q. Three houses?

A. Three houses.

Q. Who occupy those houses?

A. When I bought them twelve years ago a Madam Dirmeyer lived in one. She lived there two years after I bought it, on Franklin street.

Q. A respectable woman?

A. I can't say she was. They were all the same class of people.

Q. The same class of people occupied——

A. For twelve years, since I own them; the same class of people. The corner was occupied by a saloon, but the gentleman moved away because he wouldn't live in the neighborhood with his family.

Q. What has been the character of that neighborhood for the last twelve years?

A. I couldn't say it was good. I tried several times to rent it to respectable people, but they wouldn't live in the neighborhood.

Cross-examination.

By Mr. McCaleb:

Q. You were very anxious to get these limits down there where your property is?

A. No, sir; because I couldn't rent it to respectable people anyhow.

154 Q. You want good tenants?

A. Yes, sir. Well, it is for renting purposes.

Q. High rents this class of people pay?

A. No, sir; the rents are no higher now than twelve years ago; in fact, it is less.

Q. Do you know that these rents in what is known as Storyville are less than they were formerly?

A. Yes, sir; and I reduced the rents to try to keep the tenants.

Q. When did you do that?

A. I done that here a year ago.

Q. Who were the tenants that you were trying to keep?

A. The people that was living in it. Mrs. Lewis was one; she lived there. I reduced her rent two dollars.

Q. How much did she pay?

A. She paid fourteen dollars, and I reduced it to twelve.

Q. Who was she?

A. She was a colored person that lived there on Franklin street, sir.

Q. Was she a respectable woman?

A. I couldn't say what she was, but I don't think she was, to live in the neighborhood.

Q. And who was the others?

A. Mrs. Noyse rented the cottage from me for some time; I suppose everybody knows what she was. The corner I couldn't rent for the last year, because as soon as the tenants went in they

155 were intimidated by the police. The house has been vacant nearly all the year. The two-story house is vacant at the present time.

Q. Hasn't it been on account of the interference of the police with your tenants?

A. Yes, sir; I had only interference with them the last year, and there is a better class of people there right now than twelve years ago.

Q. The last year your tenants were intimidated by the police?

A. Yes, sir.

Q. They were disreputable people and the police were pulling them?

A. They were no worse than before; on the contrary, they were quieter.

Q. Mr. L'Hote and the people living in that neighborhood didn't want that class of people you had there for tenants and had the police to pull them?

A. Well, they were no better than before.

Q. I ask you if that was not the fact.

A. I don't know; I suppose it must have been so; I can't say why the police done so.

Q. Then it was because the police were after your tenants there and making affidavits against them that your houses became vacant?

A. No, sir; Mr. L'Hote, I believe, instructed the police to put the tenants out.

Q. Then it was because Mr. L'Hote instructed the police to put the class of tenants that you had in these buildings out that
156 your buildings became vacant?

A. It was no better than it was twelve years ago——

Q. Answer my question, madam. We are not discussing this case. You are not the attorney in it. Answer my question. Isn't that a fact?

(Question read.)

A. I suppose it must have been.

Testimony on Behalf of Defendant, Taken in Open Court, Hon. Fred D. King Presiding, on Wednesday, December 22nd, 1897.

VICTOR HAPPY sworn and examined on behalf of defendant.

Direct examination.

By Mr. McLAUGHLIN:

Q. Mr. Happy, where do you live?

A. I used to live corner of Bienville and Marais.

Q. How long did you live there?

A. Two years and four months, I think, if I ain't mistaken.

Q. Do you know this new tenderloin district in general?

A. Yes, sir; it used to be pretty lively. I rented next door to them.

Q. How long did you live around that district?

A. About two years and four months. I have been living twelve years on St. Louis street.

Q. What is the character and what has been the character
157 of that district prior to the first of January last?

A. Well, what they called kept women on St. Louis street—that is, part of it—that is, some years back. Now, I couldn't say whether they are fast or not.

Q. Now, do you know anything about any offer of sale or purchase being made for the colored church there?

A. Yes, sir.

Q. Tell what you know about it.

A. Well, Mr. Mike O'Hara—if not Mike, I think it is O'Hara——

By Mr. McCaleb: I object to all this evidence, because it is regarding real estate, and it must be in writing.

A. We both went together.

Q. Who did you go to see?

A. To see the minister, sir.

By the Court: Let him tell his story.

A. I was going down Canal street, and of course I wanted him to sign my list. I was at the corner of Bienville there, and I asked him to sign a petition, and he said he couldn't sign it before he seen the board.

Q. Who said that?

A. The minister.

Q. Taylor, the minister?

A. Yes, sir; that is right.

Q. Well, go ahead.

158 A. Mr. Taylor told me if he could sell the place he would do it. I goes over to Mr. Ramos, corner of Bienville and Marais——

Q. Mr. who?

A. Mr. Ramos, and tells him that the church was for sale; then we both—O'Hara met me in the morning, and we both went over there. I couldn't say what time it was; I couldn't swear to the time, whether it was before twelve or after twelve; but he wanted twenty-two thousand for the church; that is what he told me, and he told Mr. O'Hara the same thing.

Q. What is Mr. O'Hara's business?

A. He is a broker, sir; real-estate broker.

Cross-examination.

By Mr. Metoyer:

Q. Mr. Happy, how long did you reside — corner of Bienville and Marais?

A. I think two years and four months or three months; I am not sure; I have got my receipts here.

Q. What kind of business did you carry on there?

A. A second-hand furniture store.

Q. How long since you lived there?

A. I left there, I think—let me see—this will be the second month; we are going in now on the third month; I am not sure.

Q. What business do you carry on now?

A. The same business.

Q Did you leave that corner on your own volition, or were you notified by your landlord to vacate?

A. You ask me if my landlord notified me, or if I left on my own free will?

159 Q. Yes.

A. I left on my own free will.

Q. Because your rent was increased?

A. No, sir; it was not increased; quite different.

Q. You say that you called on the pastor in company with Mr. O'Hara?

A. Yes, sir.

Q. For the purpose of having him *to* sign a petition?

A. I said this, that I asked him on Canal street if he would sign a petition; it was a petition to allow a grocery to open there. He said he thought it was going to be a dry grocery. He says, there is a bar-room attached to it? I says, "Yes."

Q. You said yes. What did he say?

A. He didn't say anything. He said, "I am sorry I have got to make a petition against you."

Q. He said to you, "I am sorry"?

A. Yes; that he was going to make a petition against me.

Q. As soon as he discovered that you wanted to make it a bar-room?

A. Yes, sir.

Q. And not a grocery?

A. That is right, sir.

Q. He then stated to you, you say, that the church was for sale?

A. Yes, he said that, sir.

Q. And twenty-two thousand dollars was the price?

A. Twenty-two thousand dollars.

160 Q. Were you present at the public order committee about four weeks——

A. No, sir; I never attended to that——

Q. Now wait—since you called the name of the party—when this Mr. O'Hara wrote to the committee, saying that he would not appear because no one had ever placed this church in his hands for sale?

A. I never was there, sir.

Q. Now, didn't you take a great interest in having this bar-room established on the corner?

A. No, sir.

Q. This concert saloon?

A. What concert saloon?

Q. Of Clinger.

A. I only know I was told he was the man after it and offered eighteen thousand dollars for the place. Whether the offer was made I don't know.

Q. All you testified is what somebody else on the outside told you?

A. No, sir; my own evidence is what I know, but this eighteen thousand dollars is what I heard; the other evidence is clear and fair, because we went in a little side room both together. I don't know who subpœnaed me to come here; I couldn't tell you that. I am only telling the truth.

Q. You say, however, that you didn't vacate those premises on account of the increase in rent?

161 A. No, sir; because I had the lease fixed for as long as I wanted it for the same figures, except five dollars more, according if it was a grocery store, on account of the insurance.

Q. Five dollars more——

A. A month, on account of the insurance.

Q. Didn't you occupy the whole of the place?

A. Yes, sir.

By the COURT:

Q. Is Mr. O'Hara a real-estate broker?

A. Yes, sir.

Q. Wasn't he a partner of Schoenhausen—O'Hara and Schoenhausen?

A. No, sir; his brother was. He is dead. It is Mike O'Hara you are talking about; you are talking about his brother. He used to keep the Acme saloon. Mike O'Hara is dead.

By Mr. METOYER:

Q. Now, didn't you rent to Mr. Legendre, the saddler?

A. No, sir; that was private rent. Mr. Legendre had nothing to do with me at all.

Q. Didn't you rent to him?

A. No, sir.

Q. You had your family there, didn't you?

A. I didn't have no family there. I rented to a lewd and abandoned person next door to me, between Mrs. Lewis's house and mine.

Q. When you were there as a second-hand store, didn't you

162 have your family there with you?

A. No, sir; I had no family. I live on St. Louis street with Mrs. Feldner—very respectable people.

By the COURT:

Q. What is the name of the O'Hara you spoke of?

A. He is a brother to Mike O'Hara.

Q. What is his name?

A. I don't know the other name.

Q. What is his first name?

A. I couldn't say.

Q. He is a real-estate broker?

A. Yes, sir.

Q. Where does he keep his office?

A. I couldn't say that, even.

Q. How do you know he is a real-estate broker?

A. He told me, and through Mr. Ramos I know he is a real-estate broker; he deals in that.

Q. Where does he live?

A. I couldn't say. I see him going out St. Louis street.

Q. You don't know where he lives?

A. No, sir.
Q. How do you know he is a real-estate broker?
A. He told me that, sir.
Q. Do you know where his office is?
A. No, sir.
Q. What is your business?
A. Second-hand-furniture store, on Marais between St. Louis and Conti.

163 Q. Keep a shop?

A. Yes, sir; regular second-hand-furniture store—a pretty large one, too.

Q. You swear on that stand that you know that O'Hara was not the partner of Schoenhausen?
A. No, sir; I don't know if he was.
Q. Do you know the man who was a partner of Schoenhausen?
A. No, sir; I know that Mike O'Hara was. I don't think he ever owned anything.
Q. You swear on that stand that the man you held that conversation with was not the partner of Schoenhausen?
A. I couldn't say anything about that; I couldn't swear to it. Let me tell you something——
Q. I don't want you to tell me anything. Answer my question.
A. I can't swear that Mr. Schoenhausen—whether it was Mike O'Hara in partnership with him, but I know his brother was not.
Q. The question was asked you about this man that you have been talking about and that you saw. I ask you the question whether that man was a partner of Schoenhausen.
A. I couldn't say.
Q. Was he Mike O'Hara?
A. No, sir. Mike O'Hara is dead. He kept the Acme saloon.
Q. What was the business of this man O'Hara, except what he told you?
A. No more than what he told me; he was a real-estate broker.

By Mr. McCaleb:

Q. Will you please describe what kind of a man he was?

164 A. Yes, sir; a little, short man. I think he is something like this gentleman sitting here.

Q. Mr. L'Hote?
A. I don't know whether he is Mr. L'Hote or not.
Q. Yes; that is Mr. L'Hote.
A. Well, he was a short man, with a black mustache.
Q. Black eyes?
A. You are asking too many questions. I don't know whether he has black or blue eyes.
Q. Black hair?
A. I couldn't tell you that.
Q. About how high?
A. I couldn't swear to the height.
Q. Anything peculiar in his manner of speech?
A. No, sir; not as I seen.

Q. Well, did he seem to be a native American?
A. I believe he is.
Q. Did he have any brogue on his tongue?
A. I don't know, sir. I never paid much attention to it.

By the COURT:

Q. How long had you known him?
A. About four or five months, sir.
Q. You mean to say that you have known a man for four or five months, and you can't describe him or tell what his first name is?
A. I could not say, because I never knew more than O'Hara.
Q. You swear that it was not Mike O'Hara?
A. I don't believe it was.
165 Q. I don't ask for your belief.
A. I am pretty sure it was not.

By Mr. MCCALEB:

Q. Do you know the O'Hara that was with Schoenhausen?
A. I knew him in 1872 partly, when he was keeping business like he was in 1872.

By the COURT:

Q. You were in the same line of business?
A. I kept an oyster saloon, restaurant, and bar-room.
Q. Mr. O'Hara was in the same business?
A. No. I think he came afterwards, I think, at the Acme, if I am not mistaken.
Q. You knew him in 1872?
A. Yes, sir.
Q. And the other O'Hara you were talking about you have known for five months?
A. Yes, sir. I think he is a brother.
Q. You mean to tell me you can't tell whether that was the same O'Hara or not?
A. Oh, my dear man, I couldn't tell——
Q. No dear man about it. You speak to this court respectfully, sir.
A. Well, they looked to me all alike. I couldn't tell.

By Mr. MCCALEB:

Q. Can you produce this O'Hara you were talking about?
A. Yes, sir.

By the COURT:

Q. Bring him to this court tomorrow.
166 A. I don't know where he lives. There is where the trouble is.
Q. Can you tell the police where to find him?
A. If you go to the corner of Bienville and Marais, Mr. Ramos may give you the address where he lives.

By Mr. McLAUGHLIN: I offer in evidence the list of houses prepared by the police, showing the houses of ill-fame within two squares of Mr. L'Hote's residence, and I also offer the same thing regarding Mr. Carbajal's house on Bienville street and the Union Methodist Episcopal church on Bienville street, marked "D 1."

I also offer in evidence a map of the districts fixed by ordinances 13032 and 13485, council series.

I offer in evidence, to be produced and filed, maps prepared by the city engineer, showing the limits of similar districts prescribed by previous ordinances, marked with the churches, schools, and public buildings in the district, a certificate of the city engineer to be sufficient proof of the correctness of those locations.

I also offer, to be taken out of Flynn's Digest, Leovy's Digest, and any other publications of the city, the limits fixed in those other days for lewd and abandoned women.

(Defendant rests here.)

By Mr. McCALEB: I offer in evidence the city charter.

167 H. TAYLOR recalled on behalf of plaintiff and intervenors in rebuttal.

Direct examination:

By Mr. McCALEB:

Q. You heard the testimony of this man Happy about an interview which he and a man said to be named O'Hara had with you, and in which conversation you said that the church was for sale for twenty-two thousand dollars. What have you to say in reference to that statement?

A. Well, Mr. Happy, as he stated, came into my office while I was at my office and asked me to sign a petition for the opening up of a grocery and bar-room corner of Bienville and Marais, and I said to him that I couldn't do it, because the church that I belonged to was a temperance society and were advocating temperance; therefore I couldn't sign under any circumstances, and there and then told him that I would petition against it.

Q. Now, what was said about selling the church?

A. He said, "Why don't you sell and get out from here?" I says, "No, sir; we don't propose to sell, and I don't think you could buy us out." He says, "What do you think you would take?" I says, "If it is for me, I don't think you could give me twenty-two thousand dollars for this place."

Q. Then, you never proposed to sell the church either to him, O'Hara, or anybody else?

A. I could not, because I was not authorized to sell.

Q. It don't belong to you?

A. No, sir.

168 Cross-examination.

By Mr. McLAUGHLIN:

Q. You told me that nobody asked you anything about the price.

A. He asked me why didn't I sell.

Q. You told me today that no price was named?

A. There never has been any price named to me. He asked me why didn't I sell. I told him I didn't care to sell. I says, "As far as I am concerned, I don't think twenty-two thousand dollars could pay for this place."

Q. So he did speak to you about the price?

A. No, sir.

Q. Did anybody else ever make any such talk to you?

A. No, sir.

GEORGE L'HOTE, plaintiff, recalled and examined on his own behalf and on behalf of the intervenors in rebuttal.

Direct examination.

By Mr. McCALEB:

Q. Do you know this man O'Hara, said to be a real-estate dealer?

A. I had occasion in the last two months to meet Mr. O'Hara representing himself as a real-estate agent. He rented a piece of property that I own at the corner of Broad and Ursuline street, and the O'Hara that came to me is Mr. Mike O'Hara I have known for years, and I only knew one, and he is the same one who kept the Acme saloon on Royal street.

Q. And was with Schoenhausen?

A. I don't know that. I knew of him running a bar-room
169 on Royal street, because we had occasion to do some counter work for him.

Q. Do you know Mr. Happy—this man Happy?

A. I don't know him at all.

STEVE CIOLINA recalled and examined in behalf of plaintiff and intervenors.

Direct examination.

By Mr. McCALEB:

Q. Do you know this Mr. O'Hara that Mr. L'Hote referred to?

A. Yes, sir.

Q. A real-estate man?

A. I never knew him as a real-estate man. I know him as Mr. Schoenhausen's partner.

Q. Is he the same man, Mr. Schoenhausen's partner, Mike O'Hara?

A. Yes, sir; Mike O'Hara is the man.

(Case closed.)

Continued to December 22nd, 1897.

Extract from Minutes of Division "B."

TUESDAY, *December 21st*, 1897.

Present: Hon. Fred D. King, judge.

Civil District Court, Division "B."

GEORGE L'HOTE
vs.
CITY OF NEW ORLEANS ET ALS. } No. 54533.

This case came on this day for trial—present, E. Howard McCaleb, Esq.; E. H. McCaleb, Jr., Esq., and Rene C. Metoyer,
170 Esq., attorneys for plaintiff and intervenors; Jas. J. McLaughlin, Esq., assistant city attorney, for defendants—when, after hearing pleadings and evidence, this case was continued for further hearing to Wednesday, December 22nd, 1897, at 11 o'clock a. m.

Continued to December 29th, 1897.

Extract from Minutes of Division "B."

WEDNESDAY, *December 22nd*, 1897.

Present: Hon. Fred D. King, judge.

Civil District Court, Division "B."

GEORGE L'HOTE
vs.
CITY OF NEW ORLEANS ET ALS. } No. 54533.

This case came on this day for further hearing—present, E. Howard McCaleb, Esq., and Rene C. Metoyer, Esq., attorneys for plaintiff and intervenors; Jas. J. McLaughlin, Esq., assistant city attorney, for defendants—when, after hearing evidence, this case was continued by consent of counsel for argument to Wednesday, December 29th, 1897, at 11 o'clock a. m.

Rule of Plaintiff for Contempt.

Filed December 29th, 1897, and Entered on Minutes of Same Date.

Civil District Court, Division "B."

GEORGE L'HOTE
vs.
CITY OF NEW ORLEANS ET ALS. } No. 54533.

171 On motion of E. Howard McCaleb and Edwin H. McCaleb, Esqrs., attorneys for plaintiff, and on suggesting to the court

that the defendants herein have violated the writ of injunction issued in this case by serving notices on lewd women occupying houses within the old limits previously established by the common council of the city of New Orleans, requiring them to remove from the houses so occupied by them within a delay of five days, as appears from said notices, herewith filed as part hereof;

That said notices were issued by the mayor and served by the superintendent of police in contempt and in violation of the writ of injunction in this case;

That said notices are attempted evasions of said writ of injunction, the ordinance referred to therein having been repealed;

It is ordered by the court that Walter C. Flower, mayor of the city of New Orleans, and D. S. Gaster, superintendent of police, do show cause on Thursday, December 30th, 1897, at 11 o'clock, why they and each of them should not be adjudged guilty of contempt of this honorable court in having violated the writ of injunction issued and served upon them in this case and punished therefor according to law.

Notice to Marie Flury and Inmates from Mayor of the City of New Orleans to Comply with Section 8, Ordinance 4434, C. S., Annexed to and Made Part of Rule for Contempt.

Filed December 29th, 1897.

172 & 173 MAYORALTY OF NEW ORLEANS,
CITY HALL, *Dec.* 28, 1897.

To Marie Flury (and inmates), 1018 Bienville St., city:

The fact having come to the knowledge of the mayor that the house occupied by you, No. 1018 Bienville street, between Burgundy and Rampart, is of the character described in section 8 of ordinance 4434, C. S., adopted by the city council of New Orleans April 15th, 1890, you are hereby ordered to remove therefrom within the delay prescribed by section 8 of said ordinance 4434, C. S. Failing to comply with this order will subject you to the penalties provided.

(Signed) W. C. FLOWER, *Mayor.*

(Signed) R. L. TULLIS,
Secretary to the Mayor.

Notice to Alice Chapius and Inmates from Mayor of the City of New Orleans to Comply with Section 8, Ordinance 4434, C. S., Annexed to and Made Part of Rule for Contempt.

Filed December 29th, 1897.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *Dec.* 28, 1897.

To Alice Chapius (and inmates), 1021 & 1023 Custom-house St., city:

174 The fact having come to the knowledge of the mayor that the house occupied by you, No. 1021 & 1023 Custom-house street, between Burgundy and Rampart, is of the character

described in section 8 of ordinance 4434, C. S., adopted by the city council of New Orleans April 15th, 1890, you are hereby ordered to remove therefrom within the delay prescribed by section 8 of said ordinance 4434, C. S. Failing to comply with this order will subject you to the penalties provided.

(Signed) W. C. FLOWER, *Mayor.*

(Signed) R. L. TULLIS,
Secretary to the Mayor.

Argument of Case Continued Indefinitely.

Extract from Minutes of Division "B."

WEDNESDAY, *December 29th*, 1897.

Present: Hon. Fred D. King, judge.

Civil District Court, Division "B."

GEORGE L'HOTE
vs.
CITY OF NEW ORLEANS ET ALS. } No. 54533.

The argument in this case is continued indefinitely.

Answer and Return of Walter C. Flower, Mayor, and Dexter S. Gaster, Superintendent of Police, to Rule for Contempt.

Filed December 30th, 1897.

Civil District Court, Division "B."

GEORGE L'HOTE
vs.
CITY OF NEW ORLEANS ET ALS. } No. 54533.

175 To the honorable the civil district court for the parish of Orleans:

Now into this honorable court come Walter C. Flower, mayor of the city of New Orleans, and Dexter S. Gaster, superintendent of police of the city of New Orleans, and for answer and return to the rule served upon them this day to show cause why they should not be punished for contempt of court for an alleged violation of the injunction herein issued, respondent- say:

1. That they did not intend and that it never was their intention to violate any of the orders of this honorable court, and that if by any action of theirs, and particularly the action referred to in the rule for contempt served upon them herein, they have violated the injunction herein issued, the same was not done with any intention of violating the orders of this honorable court and was not intended as a contempt thereof, and that they have always obeyed and will obey the orders of this court and of every other court of the land.

2. Further answering, respondents say that in sending out the

notices referred to in and made part of the rule for contempt herein issued they in no way violated the injunction previously issued herein by this honorable court, but acted in what they considered the performance of their duties as sworn officers of the city and State.

3. Respondent- further show that by order of this honorable court they were enjoined "from in any way enforcing or attempting to enforce ordinance No. 13032, council series, as amended by section 1 of ordinance No. 13485, council series."

176 4. Respondent- further show that the said ordinance 13032, as amended by ordinance 13485, C. S., simply extends the limits wherein lewd and abandoned women may live, so as to include the west side of Robertson street from St. Louis to Custom-house street, and both sides of St. Louis street from Robertson to Basin streets.

5. Respondent- shows that they have in no way enforced or attempted to enforce the said ordinance 13032 as amended by ordinance 13485, C. S., but, on the contrary, they have given strict orders to all their employees to prevent and lewd and abandoned women from moving into any house on St. Louis street or on the west side of Robertson street.

6. Respondent- further show that the only ordinance attacked in this suit and the only ordinance which this honorable court has enjoined respondents from enforcing or attempting to enforce is the said amending ordinance No. 13485, C. S.

7. Further answering, respondents shows that the plaintiff herein, George L'Hote, has testified on oath in the proceedings in this case that the only interest he had in applying for and obtaining the injunction was to prevent the occupation of St. Louis street in the vicinity of his home by lewd and abandoned women, and the intervenors herein obtained no injunction, but simply prayed that the injunction obtained previously by George L'Hote be perpetuated.

8. Respondent- shows that such was the only purpose and intent of the injunction herein issued, and that the said injunction in no way restrained your respondents from enforcing any ordinances of the city of New Orleans, provided that your respondents did not enforce or attempt*ed* to enforce ordinance 13032 as amended

177 by ordinance 13485, C. S.

9. Further answering, respondents show that in all they did in the premises they acted in good faith and under the advice of their counsel, and what they honestly construed and still construe to be no disobedience of the orders of this honorable court; all of which they are ready to verify.

Wherefore, having made this answer and return to the rule for contempt of court, they pray that they be declared not guilty of contempt; that their action be declared not in violation of the injunction herein issued, and that they be hence dismissed with all costs and proper relief.

And that this rule be dismissed.

(Signed) JAMES J. McLAUGHLIN,
Ass't City Att'y.

(") SAM'L L. GILMORE, *City Att'y.*

Affidavit of W. C. Flower and Dexter S. Gaster.

W. C. Flower & Dexter S. Gaster, being first duly sworn, severally depose and say that all the allegations and facts of above answer and return are true.

(Signed) W. C. FLOWER, *Mayor.*
(") D. S. GASTER,
Supt. of Police.

Sworn to and subscribed before me, the undersigned authority, this 30th day of December, 1897.

(Signed) E. K. SKINNER, *N. P.*

178 *Supplemental Petition of Church Extension Society of the Methodist Episcopal Church, Intervenor.*

Filed December 30th, 1897.

Civil District Court, Division "B."

GEORGE L'HOTE
vs.
CITY OF NEW ORLEANS ET ALS. } No. 54533.

To the Honorable Fred D. King, judge of said court:

The supplemental petition of intervention of the Church Extension Society of the Methodist Episcopal Church, a corporation duly chartered and organized under the laws of the State of Pennsylvania, herein represented by L. G. Adkinson, of the local board of the Church Extension Society M. E. Church, and Rev. Henry Taylor, pastor of said church, intervenor herein, respectively shows:

That petitioner reiterates and re-avers all the facts and allegations in its original petition herein filed.

That the members of its congregation worshipping at the Union chapel and the children attending the Sabbath school held therein come from different sections of this city to said church, and are compelled in going to and returning from *from* religious services, instructions, and Sunday school to pass through the several streets situated within the limits bounded by Custom-house, St. Louis, Basin, and Robertson streets; that the defendants, Walter C. Flower, mayor of New Orleans, and D. S. Gaster, superintendent of police, are by their acts and orders inducing and compelling a large number of lewd and abandoned women to remove into the
179 area included within these streets above named, commonly known as "Storyville," and they and each of them are still persisting in notifying and compelling prostitutes and lewd and abandoned women to vacate and remove from the houses now occupied by them in the limits previously designated and used by abandoned women to and within the area above mentioned, by which acts and doings the character of the neighborhood and vicinity of petitioner has been seriously injured and damaged, and

if persisted herein will totally destroy the value of your petitioner's property, render it unfit for the purpose for which it was erected, and demoralized the congregation worshipping therein and the children attending the Sabbath school carried on in said church; that the said Walter C. Flower, mayor, and D. S. Gaster, superintendent of police, have no right to injure and destroy the value of petitioner's property with impunity, corrupt the morals, and disturb the peace and quiet of petitioner's neighborhood by inducing, coercing, ordering, and compelling lewd, abandoned women and their necessary attendants, depraved, vicious, and indecent persons, to abandon their dwelling-houses and to remove and to come to the neighborhood and vicinity of your petitioner.

That petitioner is entitled to a writ of injunction prohibiting and forbidding the City of New Orleans, through its mayor, W. C. Flower, and D. S. Gaster, superintendent of police, their officers, agents, attorneys, and employees, and each of them, from in any manner or form whatsoever, directly or indirectly, inducing, coercing, ordering, and compelling any lewd or abandoned women or prostitutes from other localities to remove to or come within and reside
180 in the neighborhood and vicinity of your petitioner's church or within the area or limits bounded by Custom-house, St. Louis, Basin, and Robertson streets; that a writ of injunction is necessary to preserve the purity of intervenor's neighborhood from invasion and to establish petitioner on a state or condition which if lost for the moment could never be recovered nor the loss atoned in money.

Wherefore petitioner prays that this supplemental petition of intervention be filed; that writs of injunction do issue herein, directed to the City of New Orleans, through its mayor, Walter C. Flower, and D. S. Gaster, superintendent of police, its officers, agents, attorneys, and employees, and each of them, prohibiting, forbidding, and enjoining them from in any manner whatsoever, directly or indirectly, inducing, coercing, ordering, and compelling any lewd or abandoned women or prostitutes from other localities to remove to or come within and reside in the neighborhood of your petitioner's church or within the area or limits bounded by Custom-house, St. Louis, Basin, and Robertson streets, or from any manner attempting to invade intervenor's neighborhood.

That the City of New Orleans, through W. C. Flower, mayor, and D. S. Gaster, superintendent of police, be severally cited to appear and answer hereto, and after proceedings had there be judgment in favor of intervenor and against defendants, as prayed for in the original petition of intervention herein filed, and that the injunctions herein issued be maintained and perpetuated.

181 And for costs and general and equitable relief.

(Signed) RENE C. METOYER,
Attorney for Intervenor.

(Signed) E. HOWARD McCALEB, *of Counsel.*

Affidavit of L. G. Adkinson and Henry Taylor.

L. G. Adkinson and Henry Taylor, being severally sworn, depose and say that the facts alleged in the foregoing petition contained are true and correct.

(Signed) L. G. ADKINSON.
HENRY TAYLOR, *P. C.*

Sworn and subscribed before me this 30th day of December, 1897.

[SEAL.] (Signed) ARTHUR B. LEOPOLD,
Notary Public.

Bond of Injunction.

Filed December 30th, 1897.

Civil District Court, Division "B."

GEORGE L'HOTE
vs.
CITY OF NEW ORLEANS ET ALS. } No. 54533.

Know all men by these presents that we, The Church Extension Society of the Methodist Episcopal Church, per Rene C. Metoyer, as principal, and Pierre Peret, as security, of the city of New Orleans and State of Louisiana, are held and firmly bound unto the City of New Orleans and D. S. Gaster, superintendent of police, in
182 the sum of one hundred dollars, lawful money of the United States of America, to be paid to said City of N. O. and D. S. Gaster, superintendent of police, their successors, heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves and each of us by himself, and each of our heirs, executors, administrators, firmly by these presents.

Sealed with our seals and dated the 30 day of December, in the year of our Lord 1897.

Whereas the said Church Extension Society of the Methodist Episcopal Church has this day presented a petition to the honorable the civil district court for the parish of Orleans, praying for a writ of injunction in the case of Geo. L'Hote *vs.* City of N. O. *et al.*, No. 54533, civil district court, parish of Orleans, Div. B.:

Now, the condition of the above obligation is that we, the above-bound The Church Extension Society of the Methodist Episcopal Church and Pierre Peret, will well and truly pay to the said city of New Orleans and D. S. Gaster, supt. of police, the defendants in said injunction, all such damages as they may recover against us in case it should be decided that the injunction was wrongfully obtained.

(Signed) RENE C. METOYER,
Att'y for Board Church Extension Society of Pennsylvania. [SEAL.]
(Signed) P. PERET. [SEAL.]

Signed, sealed, and delivered in presence of—
(Signed) ARTHUR B. LEOPOLD.

183 *Order.*

Let this supplemental petition be filed and let a writ of injunction issue herein, as prayed for and according to law, upon intervenor giving bond in the sum of one hundred dollars.

New Orleans, December 30th, 1897.

(Signed) FRED D. KING, *Judge.*

Service accepted without prejudice.

(Signed) JAMES J. McLAUGHLIN,
Ass't City Attorney.

Return on Rule for Contempt.

Extract from Minutes of Division "B."

THURSDAY, *December 30th*, 1897.

Present: Hon. Fred D. King, judge.

Civil District Court, Division "B."

GEORGE L'HOTE
vs.
CITY OF NEW ORLEANS ET ALS. } No. 54533.

The rule herein filed December 29th, 1897, by plaintiff upon Walter C. Flower, mayor, and D. S. Gaster, superintendent of police, of the city of New Orleans, for contempt of court in having violated the writ of injunction issued herein, came on this day for trial—present, E. Howard McCaleb, Esq., attorney for plaintiff; Jas. J. McLaughlin, Esq., assistant city attorney, for defendants in rule—

184 when, after hearing consent of counsel for plaintiff that said rule be dismissed, it is ordered that said rule be dismissed.

Thereupon Rene C. Metoyer, Esq., attorney, and E. Howard McCaleb, Esq., of counsel, for the intervenor, The Church Extension Society of the Methodist Episcopal Church, presented a supplemental petition of intervention for a writ of injunction to issue herein, and after hearing arguments of counsel for said intervenor and counsel for defendants, the court considering the law applicable thereto, and for the reasons orally assigned, the court ordered that said supplemental petition be filed, and that a writ of injunction issue herein as prayed for and according to law, upon said intervenor giving bond in the sum of one hundred dollars.

It is further ordered that this case, for argument, by consent of counsel for plaintiff and intervenors and counsel for defendants, *to* be fixed for Friday, December 31st, 1897, at 12 o'clock m.

Peremptory Exception of Defendants to Supplemental Petition of Church Extension Society.

Filed December 31st, 1897.

Civil District Court, Division "B."

GEORGE L'HOTE
vs.
CITY OF NEW ORLEANS ET ALS. } No. 54533.

To the honorable the civil district court for the parish of Orleans.

185 Now into court come defendants herein and peremptorily except to the supplemental petition of intervention of the Church Extension Society of the Methodist Episcopal Church filed herein December 30th, 1897, and for grounds of said peremptory exception plead:

1st. That said supplemental petition comes too late, the evidence having all been heard, the case closed and set for argument.

2nd. That said supplemental petition materially changes the original petition of intervention filed by said intervenors herein, and therefore materially changes the issue and should not be allowed.

Wherefore defendants pray that this exception be maintained; that the injunction issued on the supplemental intervention of intervenor aforesaid be dissolved, and that the said supplemental petition of intervention be dismissed at intervenor's costs.

And for general relief.

(Signed) JAMES J. McLAUGHLIN,
Ass't City Attorney.

Continued.

Extract from Minutes of Division "B."

FRIDAY, *December* 31*st*, 1897.

Present: Hon. Fred D. King, judge.

Civil District Court, Division "B."

GEORGE L'HOTE
vs.
CITY OF NEW ORLEANS ET ALS. } No. 54533.

186 On account of the illness of E. Howard McCaleb, Esq., attorney for plaintiff, this case, for argument, was continued without date.

Motion to Fix Exceptions.

Filed January 4th, 1898, and Entered on Minutes of Same Date.

Civil District Court, Division "B."

GEORGE L'HOTE
vs.
CITY OF NEW ORLEANS ET ALS. } No. 54533.

On motion of James J. McLaughlin, ass't city attorney, it is ordered that the exceptions to the supplemental petition of the Church Extension Society, filed herein on December 31st, 1897, be fixed for trial on Monday, January 10th, 1898, at 11 o'clock a. m.

Continued.

Extract from Minutes of Division "B."

MONDAY, *January 10th*, 1898.

Present: Hon. Fred D. King, judge.

Civil District Court, Division "B."

GEORGE L'HOTE
vs.
CITY OF NEW ORLEANS ET ALS. } No. 54533.

Continued to Monday, January 17th, 1898.

Exceptions Overruled.

187 Extract from Minutes of Division "B."

MONDAY, *January 17th*, 1898.

Present: Hon. Fred D. King, judge.

Civil District Court, Division "B."

GEORGE L'HOTE
vs.
CITY OF NEW ORLEANS ET ALS. } No. 54533.

The peremptory exceptions herein, filed December 31st, 1897, by defendants to the supplemental petition of intervention of the Church Extension Society of the Methodist Episcopal Church herein, filed December 30th, 1897, came on this day for trial—present, E. Howard McCaleb, Esq., and Rene C. Metoyer, Esq., attorneys for intervenor; Jas. J. McLaughlin, Esq., assistant city attorney, for defendants and exceptors—when, after hearing pleadings and counsel, the court considering the law applicable thereto and for the reasons orally assigned, it is ordered that said exceptions be overruled.

Answer to Supplemental Petition of Church Extension Society.

Filed January 18th, 1898.

Civil District Court, Division "B."

GEORGE L'HOTE
vs.
CITY OF NEW ORLEANS ET ALS. } No. 54533.

Now into court come defendants herein and, expressly re-
188 serving the benefit of all exceptions filed by them to the supplemental petition of the Church Extension Society herein, and in no way waiving same, for answer to the said supplemental petition deny all and singular the allegations thereof.

Wherefore defendants pray that said supplemental petition be rejected and this suit be dismissed at plaintiff's and intervenor's costs.

And for general relief.

(Signed) JAMES J. McLAUGHLIN,
Ass't City Attorney.

Civil District Court, Division B.

GEORGE L'HOTE
vs.
CITY OF NEW ORLEANS ET ALS. } No. 54533.

Note of Evidence on Behalf of Defendants, Taken in Open Court, Hon. Fred D. King Presiding, on Tuesday, January 18th, 1898.

Appearances: E. Howard McCaleb, Esq., and R. C. Metoyer, for plaintiff and intervenors; J. J. McLaughlin, Esq., for defendants.

Agreement.

189 It is agreed that the exceptions and answer filed by the city shall apply to all the petitions and supplemental petitions filed in this case either by the plaintiff or intervenors.

By Mr. McLAUGHLIN: We offer in evidence the map prepared by the city engineer, showing the location, marked "X."

The report of the chief of police, marked "D 1."

Copy of the petition of C. Talsheimer and others to include St. Louis street in the limits, marked "X X."

Copy of the petition of Charles Fealney, the grocer, and others to exclude Lafayette and Poydras streets.

Copy of the petition of Louis Zehner and others to include St. Louis street in the limits, marked "Y Y."

Copy of the petition of P. Peret and others to allow the old limits to remain unchanged, marked "Z."

Admission.

It is admitted and agreed between counsel for plaintiff, intervenors, and defendants that the copies of petitions produced are correct copies of the originals, and that the signatures thereto are genuine.

Counsel for the City of New Orleans also offers in evidence the map marked "D 2."

It is agreed, in case of appeal, that the maps, report of the chief of police, and the petitions shall go up in the original.

Submission.

Extract from Minutes of Division "B."

TUESDAY, *January 18th*, 1898.

Present: Hon. Fred D. King, judge.

190 Civil District Court, Division "B."

GEORGE L'HOTE
vs.
CITY OF NEW ORLEANS ET ALS. } No. 54533.

This case came on this day for argument—present, E. Howard McCaleb, Esq., E. H. McCaleb, Jr., Esq., and Rene C. Metoyer, Esq., attorneys for plaintiff and intervenors; Jas. J. McLaughlin, Esq., assistant city attorney, for defendants—when, after hearing submission of counsel on briefs to be filed by Monday, January 24th, 1898, the court took this case under advisement and allowed counsel until Monday, January 24th, 1898, to file their briefs.

Reasons for Judgment.

Filed February 3rd, 1898.

Civil District Court, Division "B."

GEORGE L'HOTE
vs.
CITY OF NEW ORLEANS ET ALS. } No. 54533.

The plaintiff contends that the ordinance No. 13485 of the city, including St. Louis, between Franklin and Robertson streets, within the limits in which lewd women shall reside, damages his property, and that the city council had not the legal right to pass the ordinance.

The intervenors, The Church Extension Society of the Methodist Episcopal Church, who have a large church on Bienville, between Marais and Villere, attended by a large congregation, and
191 B. J. Carbajal, who owns dwelling-houses rented to quiet and respectable citizens on the corner of Bienville and Villere street-, contend that both ordinances, Nos. 13032 and 13485, fixing

the limits within which said women shall reside, damages their property, makes the neighborhood unfit for decent people to worship or reside in, and that the city council had not the legal right to pass said ordinances.

The evidence in this case, the history of the localities where such women live in every city of the world where the keeping of houses of prostitution is recognized as a business and by law, established the fact that the entire locality is dedicated to immoral purposes; that churches will not be attended, and that houses cannot be rented to or occupied, with few exceptions, by decent people. Except in this city, no such house is permitted within three hundred yards of a church or cemetery.

The property in the locality for moral purposes is damaged, if not destroyed; for immoral purposes, if the owners choose to embark therein, the property is increased in value, especially if the locality fixed is small, the houses few, and the demand large, as the evidence in this case proves.

History of Prostitution, by W. W. Sanger, M. D.; De la Prostitution dans le Ville, Paris.

Neither the plaintiff nor the church desire to engage in an immoral occupation. They are not compelled by law to sell; hence the value of their property for the purposes for which they own it is destroyed.

192 The city claims that under its police power, granted in section 15 of act 45 of 1896 (the city charter), it has the right to change and fix the limits within which lewd women shall reside. If the city has this power, this court cannot interfere with its exercise, and the city can change the limits as often as the council pleases.

The responsibility for the change, the damage to property or to the morals of a particular locality, is placed upon the city council, not upon the court.

If the city has not this power, the court can restrain its exercise by injunction.

Prior to the passage of the city charter, in 1896, a large section of the city had been set apart as the limits in which lewd women should reside. Bienville between Marais and Villere streets was within said limits, but not St. Louis between Franklin and Robertson streets.

The limits had been already fixed when the charter was passed. The power given to the city, as it interferes with private property and personal liberty, must be strictly construed. The power is in these words:

"To regulate the police of theatres, public balls, dance-houses, concert saloons, taverns, hotels, houses of public entertainment, shops or places for retailing alcoholic liquors, houses of prostitution and assignation, and to close such houses from certain limits, and shall have power to exclude the same and to close houses and places for the sale of intoxicating liquors when the public safety may require it, and to authorize the mayor and police to close such places."

Act No. 45 of 1896, section 15, No. 11; act No. 20 of 1882, section 7, No. 11.

193 The power is given to regulate, police, close, and exclude houses of prostitution from certain limits.

No power is given to include within the limits a street not within the limits at the time the power was granted to dedicate a street from a moral to an immoral purpose.

If the power had been conferred to regulate houses of prostitution in the city, the power to change the limits from one section of the city to another might be inferred and included; but the power is given to regulate the police of such a house just as the city regulates the police of theatres, public balls, and like places of entertainment mentioned in the act. The city had not the power to include St. Louis between Franklin and Villere streets within the limits.

The city has the power to close and exclude houses of prostitution from every street in the limits previously fixed and confine them to the limits fixed in the ordinance 13032, unless the limits fixed therein are unreasonable and oppressive: that objection can only be raised by the lewd class affected by the ordinance in the criminal court, and not herein by intervenors, as contended. Intervenors' property on Bienville between Marais and Villere streets is within the limits previously fixed. The ordinance 13032 does not change its previous destination or local status. The city had power to pass it. If the city by closing houses of prostitution in other places forces lewd women into the neighborhood to occupy houses adjoining intervenors' church and dwelling-houses, it is their misfortune, the act of the city, beyond the interference

194 or control of the court.

Judgment is rendered in favor of plaintiff, George L'Hote, against the city, and in favor of the city against the intervenors, in accordance with this opinion.

Costs to be paid by the city of New Orleans, except the costs incurred by the intervenors, which they must pay.

Judgment.

Civil District Court, Division "B."

GEORGE L'HOTE
vs.
CITY OF NEW ORLEANS ET ALS. } No. 54533.

Considering the law and the evidence to be in favor of plaintiff and against defendants, and for the reasons assigned in the written opinion of the court this day rendered and filed—

It is ordered, adjudged, and decreed that the injunction herein issued be maintained and perpetuated;

That the ordinance of the city of New Orleans, No. 13485, council series, extending the limits for lewd women so as to include the north side of St. Louis street from the lower or wood side of North Basin to the lower or wood side of Robertson street, be, and the

same is hereby, declared illegal, null, and void, and that the defendants be condemned to pay the cost of this proceeding.

And it is further ordered, adjudged, and decreed that the demands of intervenors of the Church Extension Society of the Methodist Episcopal Church and of B. G. Carbajal be, and the same are hereby, rejected at their costs, and that the writ of injunction issued at the instance of The Church Extension Society of the Meth-
195 odist Episcopal Church, intervenor herein, be dismissed at its costs.

Judgment rendered February 3rd, 1898.

Judgment signed February 9th, 1898.

(Signed) FRED D. KING, *Judge.*

Motion of The City of New Orleans et als. for a Suspensive Appeal.

Filed February 16th, 1898, and Entered on Minutes of Same Date.

Civil District Court, Division "B."

GEORGE L'HOTE
vs.
CITY OF NEW ORLEANS ET ALS. } No. 54533.

On motion of James J. McLaughlin, assistant city attorney, and on suggesting to the court that defendants believe that there is error to their prejudice in the judgment herein, rendered on February 3rd, 1898, and signed on February 9th, 1898, in so far as it maintains and perpetuates the injunction herein obtained by George L'Hote, and in so far as it declares that ordinance 13485, council series, is illegal, null, and void, and condemns defendants to pay costs, and on further suggesting that defendants feel aggrieved thereby and are desirous of appealing suspensively therefrom—

It is ordered that defendants, The City of New Orleans and Dexter S. Gaster, superintendent of police, and each of them, be granted a suspensive appeal therefrom and herein, without bond,
196 returnable to the honorable the supreme court of Louisiana on the third Monday in February, 1898.

Motion of Church Extension Society for a Suspensive Appeal.

Filed February 18th, 1898, and Entered on Minutes of Same Date.

Civil District Court, Division "B."

GEORGE L'HOTE
vs.
CITY OF NEW ORLEANS ET ALS. } No. 54533.

On motion of Rene C. Metoyer, attorney, and E. Howard McCaleb, of counsel, for The Church Extension Society of the Methodist Episcopal Church, intervenor in the above entitled and numbered cause,

and on suggesting to the court that said Church Extension Society of the Methodist Episcopal Church, a corporation chartered and organized under the laws of the State of Pennsylvania, is advised and verily believes that there is error to its prejudice in the final judgment herein, rendered on the 3rd day of February, 1898, and signed on the 9th day of February, 1898; that mover desires to have said error corrected by appeal to the honorable the supreme court of the State of Louisiana—

It is ordered that a suspensive appeal be, and the same is hereby, granted to the said intervenor, The Church Extension Society of the Methodist Episcopal Church, from the final judgment herein, rendered on the 3rd day of February, 1898, and signed on the 9th day of February, returnable to the honorable the supreme court of Louisiana, holding its sessions in the city of New Orleans, on
197 the first Monday of March, 1898, there not being time to prepare transcript by next return day, upon intervenor giving bond, with good and solvent security, conditioned as the law directs, in the sum of one hundred dollars.

Bond of Appeal.

Filed February 18th, 1898.

Civil District Court, Division "B."

GEORGE L'HOTE
vs.
CITY OF NEW ORLEANS ET ALS. } No. 54533.

Know all men by these presents that we, The Church Extension Society of the Methodist Episcopal Church, as principal, and Beniamino Gentile, as surety, are held and firmly bound unto Paul O. Guerin, clerk of the civil district court for the parish of Orleans, his successors, executors, administrators, and assigns, in the sum of one hundred ($100.00) dollars; for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seal and dated, in the city of New Orleans, on this 18th day of February, in the year of our Lord one thousand eight hundred and ninety-eight, 1898.

Whereas the above-bounden Church Extension Society of the Methodist Episcopal Church has filed this day a motion of appeal from a final judgment rendered against it in the suit of George L'Hote *vs.* City of New Orleans *et al.*, No. 54533 of the civil district court for the parish of Orleans, on the 3rd day of February,
198 1898, and signed on the 9th day of February, 1898:

Now, the condition of the above obligation is such that the above-bound Church Extension Society of the Methodist Episcopal Church shall prosecute its said appeal and shall satisfy whatever judgment may be rendered against it, or that the same shall be satisfied by the proceeds of the sale of its estate, real or personal, if

it be cast in the appeal; otherwise that the said Beniamino Gentile shall be liable in its place.

(Signed) CHURCH EXTENSION SOCIETY,
M. E. CHURCH,
Per RENE C. METOYER, *Att'y.* [SEAL.]
BENIAMINO GENTILE. [SEAL.]

Signed, sealed, and delivered in the presence of—

—— ——.

Certificate

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

I, Jas. C. Peyton, d'y clerk of the civil district court for the parish of Orleans, do hereby certify that the foregoing one hundred and ninety-seven pages and documents annexed in original do contain a true, correct, and complete transcript of all the proceedings had, documents filed, and evidence adduced upon the trial of the
199 cause wherein George L'Hote is plaintiff and City of New Orleans *et als.* are defendants, instituted in this court and now in the records thereof under the No. 54533 of the docket of this honorable court, division "B," Honorable Fred D. King, judge. This transcript made in compliance with agreement copied on folio 197.

In testimony whereof I have hereunto set my hand and affixed the impress of the seal of said court, at the city of New Orleans, on this ninth day of March, in the year of our Lord one thousand eight hundred and ninety-eight, and in the one hundred and twenty-second year of the Independence of the United States of America.

JAS. C. PEYTON, *D'y Clerk.*

200 UNITED STATES OF AMERICA, }
State of Louisiana. }

Supreme Court of the State of Louisiana.

PROCEEDINGS HAD IN THE SUPREME COURT OF THE STATE OF LOUISIANA.

Motion and Affidavit for Time and Order.

In the Supreme Court of the State of Louisiana.

GEORGE L'HOTE
vs.
CITY OF NEW ORLEANS ET AL. } No. 12753.

On motion of James J. McLoughlin, ass't city att'y, Esq., of counsel for defendants, appellants, and the affidavit of the clerk of the lower court, to the effect that there has not been time enough for the completion of the transcript of appeal in this case, being con-

sidered, it is ordered by the court that the appellant be granted further time, until the first Monday of March, A. D. 1898, to have the transcript completed and to file it in this court.

Entered and filed February 21, 1898.

(Signed) T. McC. HYMAN, *Clerk.*

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

GEORGE L'HOTE
vs.
CITY OF NEW ORLEANS ET ALS. } No. 54533.

James C. Peyton, deputy clerk of the civil district court for the parish of Orleans, being duly sworn, deposes and says that the transcript of appeal in the above entitled and numbered cause, returnable to the supreme court of the State of Louisiana on the 3rd Monday of February, 1898, has not been completed, for the
201 reason that the time granted was not sufficient to complete the transcript of appeal in this case, until the 1st Monday of March, 1898, and that an additional delay is necessary to enable him to complete the same.

(Signed) JAS. C. PEYTON,
Deputy Clerk.

Sworn to and subscribed before me this 21st day of February, A. D. 1898.

[SEAL.] (Signed) P. J. KELLY,
Deputy Clerk of the Civil District Court for the Parish of Orleans.

(Endorsed:) No. 12753. Supreme court of Louisiana. George L'Hote *vs.* City of New Orleans *et als.* Appeal from the civil district court for the parish of Orleans. Affidavit for extension of return day. Filed Febr'y 21st, 1898. (Signed) Paul E. Mortimer, dep. clerk.

Motion and Affidavit for Time and Order.

In the Supreme Court of the State of Louisiana.

GEORGE L'HOTE
vs.
CITY OF NEW ORLEANS ET ALS. } No. 12753.

On motion of James J. McLoughlin, Esq., ass't city att'y, of counsel for City of New Orleans, appellant, and the affidavit of the clerk of the lower court, to the effect that there has not been time enough for the completion of the transcript of appeal in this case, being considered, it is ordered by the court that the appellant be granted further time, until and including the 9th day of March, A. D. 1898, to have the transcript completed and to file it in this court.

Entered and filed March 7, 1898.

(Signed) T. McC. HYMAN, *Clerk.*

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

202 GEORGE L'HOTE
vs.
CITY OF NEW ORLEANS ET ALS. } No. 54533.

I, Jas. C. Peyton, deputy clerk of the civil district court for the parish of Orleans, being duly sworn, deposes and says that the transcript of appeal in the above entitled and numbered cause, returnable to the supreme court of the State of Louisiana on the 3rd Monday of February, 1898, has not been completed, for the reason that after close application to the completion of this transcript I find that the time granted is insufficient for the completion of same, and that an additional delay until and including Wednesday, March 9th, 1898, is necessary to enable him to complete the same.

(Signed) JAS. C. PEYTON,
Deputy Clerk.

Sworn to and subscribed before me this seventh day of March, A. D. 1898.

[SEAL.] (Signed) P. J. KELLY,
Deputy Clerk of the Civil District Court for the Parish of Orleans.

(Endorsed:) No. 12753. Supreme court of Louisiana. George L'Hote *vs.* City of New Orleans *et als.* Appeal from the civil district court for the parish of Orleans. Affidavit for extension of return day. Filed 7 March, 1898. (Signed) T. McC. Hyman, clerk.

Transcript of Appeal Filed.

Supreme Court of the State of Louisiana.

GEORGE L'HOTE
vs.
CITY OF NEW ORLEANS ET ALS. } No. 12753.

Filed March 9th, 1898.
(Signed) PAUL E. MORTIMER,
Deputy Clerk.

203 Documents as per agreement of counsel sent to the supreme court of the State of Louisiana in original form. (See Transcript, folio No. —, for agreement.)

(Here follows map marked p. 203.)

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

[Endorsed on back of blue print.]

CITY ENGINEER'S OFFICE,
NEW ORLEANS, LA., *Dec. 28th*, 1897.

The blue print on reverse hereof has been prepared from the tracings of the latest map of the city of New Orleans now on file and of record in this office. The colored lines thereon and corresponding numbers have been marked from description in the city ordinances, and they represent —, and churches, schools, and public buildings have been added under conventional signs in black ink.

(Signed) GEO. A. GRANDJEAN, *Ch'f Clk.*

[Endorsed on back of blue print.]

No. of Churches, Schools, & Public Building- Shown on This Map.

		Churches.	Schools.	Public buildings.
In limits under ord.	3267, O. S. 3428, O. S. 6302, O. S.	41	16	17
" " " "	4101, C. S. 4434, "	9	2	10
" " " "	13032, C. S. 13485, C. S.	1	1	0

[Endorsed on back of blue print:] No. 54533. George L'Hote *v.* City of New Orleans. Filed January 18th, 1898. G. P. Molloy, d'y clerk. Blue print "A." 12753. Supreme court of Louisiana. Filed Mar. 9, 1898. T. McC. Hyman, clerk.

The following houses are situated within 2 squares of Mr. Geo. L'Hote's residence, No. 522 Treme street:

Name of present occupant.	Location.	Kind of house.	Length of time occupying same.	Rent per month paying.	Name of former occupant.	Kind of house kept.	Rent per month paid.	Length of time used — purposes of prostitution, etc.
Smith, Emma	563 N. Franklin, cor. St. Louis.	Prostitution	2 months	$12.00	Tillie Davis	Prostitution		
Clark, Eva	1363 St. Louis, Franklin and Treme.	Do.	4 do.	$12.00	Viola Anderson	Do.	$10.00	1 year.
Black, Ida	1367 St. Louis, Franklin and Treme.	Assignation	1 do.	$15.00	Mrs. Noys	Assignation	$15.00	12 years.
Williams, Lou Ella	1369 St. Louis, Franklin and Treme.	Do.	5 do.	$15.00	Ella Woods	Do.	$15.00	Unknown.
Ford, Julia	1413 St. Louis, Treme and Marais.	Prostitution	14 do.	$12.00	Blanche Hill	Prostitution	$12.00	5 months.
Collins, Annie	1421 St. Louis, Treme and Marais.	Suspicious	4 do.	$12.00	Miss Annie	Do.	$12.00	1 year.
Patton, Jennie	1419 St. Louis, Treme and Marais.	Prostitution	1 year	$12.00	Jessie Evans	Do.	$14.00	15 months.
Francis, Emma	1425 St. Louis, Treme and Marais.	Do.	7 months	$12.00	Unknown prostitutes	Do.	$12.00	
Halpin, Jennie	1427 St. Louis, Treme and Marais.	Do.	1 do.	$20.00	Do.	Do.	$15.00	4 or 5 years.
205 Francis, J. H.	1439 St. Louis, Treme and Marais.	Assignation	6 years	$15.00	Francis Goetz	Assignation	$17.00	Unknown.
Noys, Mrs.	1426 St. Louis, Treme and Marais.	Do.	7 months	$35.00	Georgia McKee	Prostitution	$30.00	
McWilliams, Dalia	1424 St. Louis, Treme and Marais.	Do.	1 year	$35.00	Annie Lee	Assignation	$35.00	Unknown.
Simmons, Eugenia	1420 St. Louis, Treme and Marais.	Do.	5 years	$25.00	Unknown	Assignation	$20.00	Unknown.
Cook, Miss Annie	1416 St. Louis, Treme and Marais.	Do.	3 months	$40.00	Lou Jackson	Do.		13 years.
Sanders, Mrs. D.	1410 St. Louis, Treme and Marais.	Do.	7 do.	$20.00	Lou Prout	Do.	$15.00	Unknown.
Moore, Marie	1408 St. Louis, Treme and Marais.	Prostitution	2½ years	$30.00	Jessie Hopkins	Do.	$25.00	10 years.

(Endorsed:) 4th precinct. Report of houses of prostitution and assignation in vicinity of residence of Mr. Geo. L'Hote and in the vicinity of Mr. B. G. Carbajal's houses and colored church on Bienville St. Respectfully forwarded to D. S. Gaster, supt. of police. (Signed) G. Porteous, serg't comdg.

206 The following houses are situated within two squares of the houses of Bernard G. Garbajal, Nos. 1522, '24, '26, '28 Bienville, and the colored church, Bienville bet. Marais and Villere:

Name of present occupant.	Location.	Kind of house.	Length of time occupying same.	Rent per month paying.	Name of former occupant.	Kind of house kept.	Rent per month paid.	Length of time used for purpose of prostitution, etc.
Sessier, Emma	1502 Bienville, Marais and Villere.	Prostitution	2 months	$25.00	Unknown dress-maker	Unknown	Unknown.	
Stuart, Sallie	1518 Bienville, Marais and Villere.	Do.	2 do.	Occupant is owner.	Private family	Residence	$17.00	
Thomas, Miss Patsy	1530 Bienville, Marais and Villere.	Do.	2 do.	$30.00	Unknown prostitutes	Prostitution	$20.00	2 years.
Wallace, Mamie	1542 Bienville, Robertson and Villere.	Do.	4 do.	$30.00	Mary Anderson	Furnished rooms	$14.00	4 "
Blank, Josie	1544 Bienville, Robertson and Villere.	Do.	5 do.	$30.00	Sarah Porter	Prost	$14.00	Unknown.
Swan, Ida	1546 Bienville, Robertson and Villere.	Do.	6 do.	$30.00	Octavia Helm	Assignation	$14.00	Do.
O'Brien, Kittie	1548 Bienville, Robertson and Villere.	Do.	5 do.	$60.00	Private family	Residence	Unknown.	
David, Mrs. M.	1558 Bienville, Robertson and Villere.	Assignation	13 years	Owner	Do., do.	Do.	Do.	
207 Roussell, Sarah	1564 Bienville, Robertson and Villere.	Prostitution	3 years	$26.00	Sarah Roussel	Assignation	Unknown.	Unknown.
Burke, Mollie	1559 Bienville, Robertson & Villere.	Do.	$2\frac{1}{2}$ months	$25.00	Private family	Residence	$18.00	
Richardson, Celeste	1537 Bienville, Robertson and Villere.	Do.	8 do.	$25.00	Do., do.	Do.	Do.	
Hale, Norah Clark, Jessie	1545 Bienville, Robertson & Villere.	Do.	2 do.	$38.00	Louisa Chandler	Prostitution	Unknown.	
Dempsey, Fanny	1527 Bienville, Villere & Marais.	Do.	6 months	$45.00	Unknown	Assignation	Unknown.	Unknown.
Donahue, Jennie	1523 Bienville, Villere & Marais.	Do.	2 do.	$20.00	Private family	Residence	$13.00	
Jacquet, Louise	1515 Bienville, Villere and Marais.	Do.	3 do.	$40.00	Blanch Brougat	Assignation	$17.00	Unknown.
Wilson, Bertha	1511 Bienville, Villere & Marais.	Assignation	9 do.	$25.00	Unknown	Do.	$25.00	Do.
Smith, Louisa	1507 Bienville, Villere & Marais.	Do.	20 years	Owner	Do.	Do.		Do.
Bell, Mrs. M.	1426 Bienville, Treme & Marais.	Prostitution	1 month	$65.00	Ella Watson	Prostitution	Unknown.	Do.

Report of the Chief of Police, "Marked D 1"—Continued.

Name of present occupant.	Location.	Kind of house.	Length of time occupying the same.	Rent per month paying.	Name of former occupant.	Kind of house kept.	Rent per month paid.	Length of time used for purpose of prostitution, etc.
Nobles, Lottie	1422 Bienville, Treme & Marais.	Prostitution	4 months	$30.00	Mary Seals	Prostitution	$25.00	Unknown.
Shields, Sophie	1420 Bienville, Treme & Marais.	Do.	4 do.	$25.00	Private family	Residence	$25.00	Do.
208 Howard, Anna	1418 Bienville, Treme & Marais.	Assignation	11 months	$15.00	Mrs. Pete	Assignation	$15.00	Unknown.
Goodby, May L.	1416 Bienville, Treme & Marais.	Prostitution	3 years	$15.00	Unknown	Unknown	$15.00	Do.
Anderson, Marie	1410 Bienville, Treme & Marais.	Do.	2 months	$35.00	Private family	Residence	$28.00	
Bell, Ada	1406 Bienville, Treme & Marais.	Do.	3 do.	$25.00	Mittie White	Prostitution	Unknown.	Unknown.
Winter Lilly	1404 Bienville, Treme & Marais.	Do.	3 do	$25.00	Unknown	Prostitution	Unknown.	Unknown.
Howard, Mamie	1411 Bienville, Treme & Marais.	Do.	15 do.	$15.00	Do.	Dress-maker	$15.00	Do.
Robertson, Mrs.	1413 Bienville, Treme & Marais.	Do.	3 years	$15.00	Do.	Do.	Unknown.	Do.
Carter, Minnie	1419 Bienville, Treme & Marais.	Do.	5 months	$25.00	Lilly Winter	Prostitution	$20.00	Do.

(Endorsed:) No. 54533. George L'Hote *vs.* City of New Orleans *et al.* Filed Jan'y 18th, 1898. (Signed) G. P. Molloy, d'y clerk. Statement "B," showing questionable houses, etc. "D" 1. 12753. Supreme court of Louisiana. Filed Mar. 9, 1898. (Signed) T. McC. Hyman, clerk.

209 *Document Marked "X X," Being Petition of C. Talsheimer and Others to Include St. Louis Street in the Limits.*

NEW ORLEANS, *July* 15, 1897.

To the honorable the committee on public order of the city council for the city of New Orleans.

GENTLEMEN: We, the undersigned, property-owners of the city of New Orleans, in the district bounded by St. Louis, Treme, Marais, & Bienville streets, respectfully petition the city council through your honorable body to report amended an ordinance introduced at the last meeting of the city council in relation to lewd and abandoned women, so as to include the district on St. Louis between Marais and Liberty, on both sides of the street. This district is composed of the same element that inhabits the proposed limit now before your body, and no harm can inure to any one concerned to include the above two (2) sides of the street in the proposed amendment.

Trusting you will give this matter your earnest consideration, we are,

Very respectfully,

(Signed) C. THALSHEIMER, # 1416 St. Louis Str.
J. BEOUBAY, # 1412 St. Louis Str.
WID. A. H. PONS, # 1440 St. Louis Str.
WID. MRS. A. LAMBERT,
1403 & 1428 St. Louis Str.
GALLAGHER & SPITZFADEN, *Ag't*,
1421–'25 St. Louis Str.

(Endorsed:) No. 54533. George L'Hote *vs.* City of New Orleans. Filed Jan'y 18th, 1898. (Signed) G. P. Molloy, d'y clerk. 12753. Supreme court of Louisiana. Filed Mar. 9, 1898. (Signed) T. McC. Hyman, clerk.

210 *Document Marked "Y," Being Petition of Charles Feahney and Others to Include Lafayette and Poydras Streets.*

NEW ORLEANS, LA., *Feb'y 6th*, 1897.

Mess. chairman and gentlemen of the public order committee.

DEAR SIRS: We, the undersigned, property-holders and business people of the third ward, understand that your committee is about to pass an ordinance restricting the unfortunates, lewd and abandoned women, to certain streets, and we hereby pray that the streets of Lafayette and Poydras should not be in the boundary, as these streets are the avenues to the Poydras market, by which all the families residing back of town walk to make their daily market and other purchases, and it would be creating a hardship, to say the

least, on these respectable people to place these unfortunates on their path.

Yours respectfully,

(Signed) CHAS. FEAHNEY.
GEO. A. LEE.
JULES MANAUD.
S. COHEN & CO.,
1018 Poydras St.
S. BONART & CO.,
1014 Poydras St.
GEO. M. ZERR,
1008 Poydras St., barber.
JOSEPH DI CARLO,
N. 417 Basin St.
A. DI CARLO,
N. 234 Poydras St.
R. PERRETTO,
N. 1006 Poydras St.
OTTO HELMANN,
902 Poydras St.
V. FOULON, 507 S. Rampart.
BRANDENBORG BROS.,
515 S. Rampart.

(Endorsed:) "Y." No. 54533. George L'Hote *vs.* City of New Orleans. Filed Jan'y 18th, 1898. (Signed) G. Moloy, d'y clerk. No. 12753. Supreme court of Louisiana. Filed Mar. 9th, 1898. (Signed) T. McC. Hyman, clerk.

211 *Document Marked "Y Y," Being Copy of Petition of Louis Zehner and Others to Include St. Louis Street in the Limits.*

NEW ORLEANS, *July 2nd*, 1897.

We, the undersigned, owners and occupants of the houses fronting on St. Louis street, from Basin to Robertson streets, second district, hereby request and petition the common council for the city of New Orleans to extend the district for lewd and abandoned women so that they may occupy houses any place on St. Louis street between Basin & Robertson streets.

Name.	Owner or occupant.	No. of house.
Louis Zehner	St. Louis St.	1417
G. Hollerbach	St. Louis St.	3 properties.
Wid. Jno. Boessel	St. Louis St.	1533
" "	"	1534 & 1536
" "	"	1510
Gallagher & Spitzfaden, ag'ts.		
C. Thalsheimer	St. Louis St.	1416
G. Kirby Smith		
J. N. Walker	1502 St. Louis	
A. P. Duconge	St. Louis, ag't.	
Ella Williams	St. Louis	1309
Heirs Mrs. M. Michel	St. Louis & Marais	
N. G. Carbajal	St. Louis St.	1426

(Endorsed:) "Y Y." No. 54533. George L'Hote *vs.* City of New Orleans. Filed Jan'y 18th, 1898. (Signed) G. P. Molloy, d'y clerk. No. 12753. Supreme court of Louisiana. Filed Mar. 9, 1898. (Signed) T. McC. Hyman, clerk.

Document Marked "Z," Being Copy of Petition of P. Peret and Others to Allow the Old Limits to Remain Unchanged.

212 To the hon. the committee on public order of the common council of the city of New Orleans:

The undersigned, property-holders and merchants in the district bounded by Canal, St. Louis, Rampart, and Dauphine streets, in the second municipal district of this city, beg leave to submit to your honorable body the following considerations against the adoption or enforcement of any ordinance requiring the removal of courtesans from the aforesaid limits, to wit:

1st. Your memorialists respectfully set forth that any such ordinance, far from accomplishing anything desirable as to morality in said district or the city at large, will have rather a contrary effect by causing these women to disperse throughout the city, infesting neighborhoods now occupied by respectable families, to the inconvenience and annoyance of the residents as well as the detriment of the neighborhoods to which they so remove, and the debauchery of the youth of those neighborhoods, if not worse, and we submit that experience will demonstrate that it will be impossible to confine these women to the limits proposed as being entirely too small in extent.

2nd. Your memorialists further submit that as tax-payers and citizens they are entitled to consideration at the hands of your honorable body and should not be wantonly damaged in their property and rights; that the enforcement of the proposed ordinance will so damage them for this, to wit, that for a long number of years, by the unanimous consent of the authorities of the city and the public at large, this district has been set aside as the particular quarter for women of this class to such an extent that if they are now driven therefrom the evil repute thereof will continue to attach to the neighborhood for long years to come, to the great injury of your memorialists in the loss of rents and the collapse of business generally, for it is quite certain that no respectable family will care or dare to take up its residence in this quarter for years to come.

3rd. Your memorialists further represent that the district from which it is proposed to expel these women is, from a police standpoint, the least objectionable of all neighborhoods, for, owing
213 to its proximity to the main thoroughfare of the city, it requires less force to police this district as at present than if removed further from the business portion of the city.

Wherefore your memorialists pray that your committee report unfavorably upon any and all said ordinances.

Respectfully,

P. PARET, owner, 1013–1015 Custom-house St.
JOS. PELLIGRINI, owner, 1006 Custom-house St.
C. N. MAESTRI, Furniture Co., Ltd., owners, Custom-house & Rampart.
J. L. PRICE, restaurant, 1020 Custom-house.
F. H. LAROU, grocer, Custom-house & Dauphine.
W. WIRTH, Furniture Co., corner Custom-house & Dauphine.
M. MARTINET, owner, 1002 Custom-house St.
J. A. LEGENDRE, druggist, Dauphine & Custom-house; M. D., 900 Custom-house.
P. JUDLIN, owner, 932 Custom-house St.
P. pro J. H. MILLET, owner, 933, 937 and 939 Custom-house St., T. N. Bains.
B. KOCH, owner, 940 Custom-house.
B. GENTILE, owner, 931, 927, 919 Custom-house St.
B. GENTILE, owner, 940 Bienville St.
J. G. LIBADIOTÉ, candy, 204 Dauphine St.
JNO. J. LEVANNA, 213 Dauphine St.
E. L. FERNANDEZ, per J. N. L.
JAMES N. LAROSE, property-owners, 164 Bienville, 186 C. House, 170 C. H.
A. J. BENNER, grocer, Bienville & Burgundy.
Y. M. LONGUEFOSS, grocer, Conti & Burgundy.
Mr. JOSEPH SPERANDEO, owner, 411 Burgundy St.
409 "
SEC. GEORGE GROVER, 127 and 301 Burgundy St.
Per pro JOHN RUINI, 305 and 309 Burgundy St.
JOHN BOUSSET, owner, corner Conti and Burgundy, and owner corner Bienville and Burgundy.
F. CLAISE, 77 Burgundy St.
J. B. LAPLACE, owner, corner Bienville & Burgundy.
JEAN BORDES, 104 Bienville St.
PETER FORD, 934 Bienville.
214 AUGUST HUARD, ag't, representing about fifteen properties on Rampart, Burgundy, Dauphine, and between Custom-house and St. Louis.
VICTOR GRUBER, grocer, Conti and Dauphine.
FRANK LALLA, owner, 63 and 412 Burgundy.
E. WYMAN, grocer, Conti — Burgundy.
C. D. LAFFERANDERIE, brick-a-brac, 423 Burgundy.
JOS. ROTH, 934 Canal St.
E. CURTIS, agent for E. Kuntz, 159 Custom-house, 20 Burgundy.
Widow CASSARDERE, 1006 Custom-house, and F. Pelligrini.
WM. F. WENGER, for Mrs. F. Wenger, Cus. & Burgundy.
JNO. A. PEYROUX, for A. Sarthou, 1012–1016 Toulouse St., n'r Burgundy.
P. CRABITES, owner, 10 and 12 N. Rampart.
N. O. LOAN & PLEDGE CO., 1037 Canal St.

SIMON ROSENTHAL, owner, Nos. 2 and 4 Rampart St.
B. MORERE, owner, 532 and 534 Burgundy.
J. B. EENARD, old 87 Burgundy, new 1029 Bienville St.
Mrs. J. DEJEAN, 808 and 810 Custom-house St.
Per pro J. B. ESNARD.
Mrs. H. BRISBEY, owner, 116 Bienville St., per C. D. Sauvenait, 128 Bienville St., 130 Bienville St., corner C. H. and Burgundy.
P. E. SAHUQUE, owner, corner Conti and Burgundy.
H. MAHOU, corner Dauphine and Conti, old 67 Dauphine, old 150 St. Louis St.
JOHN F. BELVY, owner, 215 Canal.
THE MORITZ OPTICAL CO., 1035 Canal St.
BAGINSKI, MICHEL & Co., 837 Canal St.
JULES DOMICQUES' SON, 835 Canal St.
S. SCHWARTZ & Co., Canal & Dauphine St.
L. FELLMAN & Co., Canal St.
H. GREENWALD, Grand opera-house.
N. ROMBOTES, 925 Canal.
M. GOODMAN, 935 Canal.
M. WEIZ, 1005 Canal.
EUG. SIMON, 929 Canal St.
L. N. BRUNSWIG, the Builders' Hardware Co., Ltd., 1015 Canal.
215 C. SAMSON, 820 Canal St.
L. LAFFERANDERIE, owner, 732 Bienville St.
J. M. LAFFERANDERIE, owner of one property, Burgundy St.
SILVESTER BLASINI, owner old 151 and 151½ Conti St., 925, 927, and 929 Conti St.; ag't for old No. 127 and 127½ Burgundy, old No. 94 Burgundy St.
P. A. LAMBERT, SR., 75 Dauphine; curator, 73 Dauphine; ag't, Leon A. Lambert, 71 Dauphine.
Misses T. NOUVET, Conti St. bet. Dauphine & Burgundy, 60 feet.
ROJAS & CONNER, photographers, 1007 Canal St.
J. KRANZ & BRO., 815 Canal St.
E. A. RAVAIN, livery stable, Rampart & Bienville, owner corner Rampart & Conti, three properties.
J. ROSENBERG CO., LTD., 827 Canal St.
S. G. KREEGER, 811 Canal St.
KEIFFER & HIRSH, 805 Canal St.
M. PRIMO, manager, Canal St. pharmacy.
A. SCHWARTZ & Co., Canal & Bourbon.
J. WINTER, ag't, 11 Burgundy.
F. D. RUTH CO., LTD., 927 Canal St.

(Endorsed:) "Z." No. 54533. George L'Hote *vs.* City of New Orleans *et al.* Filed Jan'y 18th, 1898. (Signed) G. P. Molloy, d'y clerk. No. 12753. Supreme court of Louisiana. Filed Mar. 9, 1898. (Signed) T. McC. Hyman, clerk.

(Here follows diagram marked p. 216.)

[Endorsed on back of blue print:] No. 54533. George L'Hote *v.* City of New Orleans *et al.* Filed Jan'y 18th, 1898. G. P. Molloy, d'y clerk. 12753. D 2. Supreme court of Louisiana. Filed Mar. 9, 1898. T. McC. Hyman, clerk.

216½ *Cause Heard and Submitted.*

(Extract from Minutes.)

NEW ORLEANS, WEDNESDAY, *April 20th*, 1898.

The court was duly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice; Lynn B. Watkins, Joseph A. Breaux, Henry C. Miller, Newton C. Blanchard, associate justices.

GEORGE L'HOTE
vs.
CITY OF NEW ORLEANS ET ALS. } No. 12753.

217 This cause came on this day to be heard and was argued by counsel. Mr. E. Howard McCaleb opened for the plaintiff, appellee; Mr. James J. McLoughlin, assistant city attorney, replied on behalf of the defendants, appellants, and Mr. McCaleb closed the argument. Thereupon the court took the cause under advisement upon the briefs for the parties in interest and the papers now on file.

Opinion of the Court.

UNITED STATES OF AMERICA,
State of Louisiana.

Supreme Court of the State of Louisiana.

NEW ORLEANS, MONDAY, *November 21st*, 1898.

The court was duly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice; Lynn B. Watkins, Joseph A. Breaux, Henry C. Miller, Newton C. Blanchard, associate justices.

His honor Mr. Justice Miller pronounced the opinion and judgment of the court in the following case:

GEORGE L'HOTE
vs.
CITY OF NEW ORLEANS ET ALS. } No. 12753.

Appeal from the civil district court for the parish of Orleans.

The defendants appeal from the judgment maintaining the injunction restraining the enforcement of the ordinance of the common council changing the limits beyond which lewd women are prohibited from residing.

From an early period it has been the policy of the councils of the

city to assign limits for houses of prostitution by prohibiting, under prescribed penalties, the location of such houses beyond the designated limits. The ordinance earliest in date on this subject to which our attention has been directed was passed in 1857. There were changes in the limits in subsequent years, and the last ordinance which gave rise to the present controversy prescribed the south side of Custom-house street to the north side of St. Louis and from Basin to the lower side of Robertson street as the limits
218 beyond which houses of prostitution were prohibited. This, as we understand it, extended the permitted limits of previous ordinances so as to include St. Louis street, from which such houses had been excluded by the ordinance passed shortly preceding that the city is now seeking to enforce. This last ordinance restricts the limit assigned to these houses by the previous ordinances by substituting "between Basin and Robertson streets for the more enlarged space comprised between the river in front and the rear of the city designated by earlier ordinances," although St. Louis street is embraced in the last ordinance, not in the ordinance immediately preceding the last enactment. It is claimed that St. Louis street never was within the space assigned for these houses; we derive a different impression, but whether or not included in the earlier ordinances can exert no appreciable influence on our decision.

The plaintiff, a property-owner and a resident on Treme street intersecting St. Louis street and half a square from St. Louis street, alieges in his petition for the injunction the close proximity of his dwelling to that portion of St. Louis street brought within the area in which houses of prostitution are to be allowed by the ordinance he proposes to enjoin; that his locality has been and is free from such houses; that their introduction is calculated to render his property unfit for his family dwelling, and greatly depreciates its value; that the ordinance excludes a large portion of the area in which houses of prostitution were previously permitted, at the same time enlarging the limits so as to embrace St. Louis street; that the city, by the previous ordinances designating the limits and excluding St. Louis street, had exhausted the legislative power in respect to the subject, and the petition charges that the ordinance is oppressive, unjust, and violative of the protection to persons and property accorded by the Constitution of the United States and of the State. There is an intervention by a religious corporation owning and maintaining a church near to St. Louis street between — Robertson streets, and another intervention by another property-owner in the same neighborhood. The allegations in the petitions of intervention present the subject in a different phase and allege the injury to property within the designated area arising from confining houses of prostitution as proposed by the ordinance. Thus, the theory of the plaintiff's petition is that the city has no
219 power to change the limits of houses of prostitution. The position of the intervenors is, there should be no limits for such houses.

The city and the officials sought to be restrained by the injunction except to the jurisdiction of the civil district court on the

ground that the injunction sought is directed against the enforcement of a penal statute; that the petition discloses no cause of action, and on other grounds unnecessary to notice. The judgment maintained the injunction, and this appeal followed.

It is clear that the civil district court has no jurisdiction to restrain prosecutions for crime confided by the law to the criminal courts. No prevention of such prosecutions is attempted. The plaintiff seeks the injunction for the protection of his rights of property, menaced, as he conceives, by an illegal ordinance. The right of the citizen to that protection is too clear to permit dispute, and in our view the petition contains all that is essential to secure relief at our hands if the allegations in the petition are supported. 1st High on Injunction, s. 68.

The regulation of houses of prostitution would seem to be so clearly connected with public order and decency, the policy announced by the ordinance has been so long exerted in all large cities of our country, and the power has had such frequent recognition in the charters of this city that it would seem the power itself cannot be successfully controverted. City charter of 1870, s. 12; of 1882, s. 8; of 1896, s. 15. We have, however, given careful attention to the argument that urges objection to all such legislation and which directs attention to the grounds of opposition deemed specially applicable to the ordinance, the execution of which is sought to be arrested.

That there are limitations to the power asserted by this ordinance may be conceded. It does not, however, readily occur to the mind that confining houses of this character within certain limits by the appropriate ordinance is violative of any of the constitutional guarantees invoked in this discussion before us. The ordinance neither sanctions or undertakes to punish vice. The power to punish vice not in the form of an offence, denied by the argument and enforced by the authorities we find in the briefs, is, in our view, entirely distinct from the function the ordinance asserts as belonging to municipal government by the express terms of the city charter. It is urged, too, the ordinance is a license for vice, and hence illegal. Tiedman on Police Power, p. 291. Undoubtedly the court should refuse its aid to any ordinance if of the character asserted by the argument. The vice, the subject of this ordinance beyond the reach of penal statutes, is simply subjected by this ordinance to that restraint demanded by the public interest. The unfortunate class dealt with by the ordinance must live; they are not denied shelter, but assigned that portion of the city beyond which they are not permitted to establish their houses. Thus viewed, the ordinance cannot be deemed open to the objections that it either punishes or grants a license to vice beyond the competency of the council.

Again, it is urged that the ordinance is oppressive, unreasonable, and hence not to be enforced, because it seeks to confine the depraved women in too narrow limits. We find the testimony of this tendency in the record. If the ordinance is lawful this question of space is, in our opinion, confided to the council and not for the

courts. At any rate, we find no basis in the record to authorize the conclusion that the judgment of the council on this question is erroneous. There is the general proposition asserted by the argument that the correct policy is to diffuse the houses throughout the city, although the anticipated presence of the houses within half a square of the plaintiff's residence and though on a different street prompted this suit and vigorous opposition of the plaintiff. We cannot accept the view of public policy announced by the argument for the plaintiff, and on that ground set aside the action of the council.

The argument is advanced that houses once used for immoral uses, the subject of the ordinance, can never regain a reputable character; that the primary ordinance of this character gave the neighborhood it designated and to the property within its limits an ineffaceable stigma, depreciating for all time the value of the property, and hence it is argued that this first concession of private right for the public good is enough—that is, the first exercise of power by the council is exhaustive of its power over the subject. The character of the houses within the limits first assigned fixed forever, it is hence contended the limits cannot be changed, least of all extended, involving, as it would, a fresh and unnecessary sacrifice of
221 private right. The effect of the argument, while conceding the function of municipal government to assign limits for such houses, is to affirm that this important municipal function once exerted can never be again exercised. The limits, we are told, must remain as originally fixed, irrespective of all those changes and public needs apt to arise, and to demand modification of limits assigned years previously for uses admitting of no suppression, but which can be restricted as to locality. It seems to us if the functions asserted by the ordinance can be once exerted, as the argument concedes, the more reasonable conclusion is that the function may again be called into exercise to meet the changed conditions time has called into existence, and which appeal for appropriate action to the municipal authorities. We cannot, therefore, assent to the proposition that because limits for these houses were assigned perhaps more than three-quarters of a century ago, therefore the council cannot furnish in 1896 the legislation demanded by the public interest.

There remains the argument addressed to us varied in form, but maintaining the general proposition that the ordinance operates to deprive the citizen of his property—that is, to depreciate its value, the same as deprivation in legal effect. We can readily appreciate there might be an arbitary exercise of this power that would warrant an appeal to the courts. Thus, to extend these limits so as to embrace without any apparent reason, if reason could exist, portions of the city always devoted to private residences, schools, churches, and other lawful uses might well be deemed oppressive and an abuse of the power of municipal government: but, as we understand this ordinance in its main features, it is restrictive—that is, confines these houses within narrower bounds. True, it takes in St. Louis street, or, as we believe, one side of the street excluded by the ordi-

nance immediately preceding that now sought to be enforced. If it be true that St. Louis street—that is, both sides of it—were always without the area in which these houses were permitted, it is none the less true that St. Louis street has always been in close proximity to the space allotted to houses of prostitution. An extension of these limits so as to take in that street, or rather that portion of it, always alongside of the area for these houses, and at the same time greatly diminishing that area as previously delineated, does not strike us as arbitrary or as calling for any substantial sacrifice
222 of private rights beyond that required by antecedent ordinances. To whatever extent, however, the right of private property may be deemed affected by this last ordinance, it must be borne in mind that it is their great power of government given to preserve the morals, health, and lives of the community that requires the surrender of right by the citizen supposed to be exacted by this ordinance. To that police power all must yield obedience. As put in the text-books and enforced by all decisions: "Every citizen holds his property subject to the proper exercise of the police power exerted either by the legislature or by the subordinate political corporations. It is settled that police laws and regulations, though they may disturb the enjoyment of individual rights, are not unconstitutional. They do not expropriate property for public use. If the individual sustains injury it is deemed *damnum absque injuria*, or, in the theory of the law, the injury to the owner is deemed compensated by the public benefit the regulation is designed to subserve." 1st Dillon Municipal Corporations, p. 93. It is our conclusion, on every aspect of the case, that the ordinance is the exercise of lawful power, and no ground exists to enjoin the execution of that the ordinance proposes. 1st Dillon, s. 310; Black's Constitutional Law, p. 310; Dwarris on Statutes, p. 455.

It is therefore ordered, adjudged, and decreed that the judgment of the lower court in favor of plaintiff be reversed and the injunction obtained by plaintiff issued be dissolved, his suit be dismissed, and that the judgment of the lower court dismissing the interventions and dissolving the injunction granted on the prayer of one of them be affirmed, and that plaintiff pay costs.

The chief justice concurs in the judgment but declines to sign it for reasons orally assigned from the bench.

Mr. Justice Blanchard concurs in the judgment also for reasons also assigned from the bench.

Final Judgment.

(Extract from the Minutes.)

223 NEW ORLEANS, MONDAY, *November 21st*, 1898.

The court was duly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice; Lynn B. Watkins, Joseph A. Breaux, Henry C. Miller, Newton C. Blanchard, associate justices.

His honor Mr. Justice Miller pronounced the opinion and judgment of the court in the following case:

GEORGE L'HOTE
vs.
CITY OF NEW ORLEANS ET ALS. } No. 12753.

Appeal from the civil district court for the parish of Orleans.

It is ordered, adjudged, and decreed that the judgment of the lower court in favor of plaintiff be reversed and the injunction obtained by plaintiff issued be dissolved, his suit be dismissed, and that the judgment of the lower court dismissing the intervention and dissolving the injunction granted on the prayer of one of them be affirmed, and that plaintiff pay costs.

(The chief justice does not dissent, but will not sign the judgment in this case.)

(Mr. Justice Blanchard concurs in the judgment for reasons orally assigned from the bench.)

Petition for Rehearing.

Supreme Court of Louisiana.

GEORGE L'HOTE ET ALS.
versus
CITY OF NEW ORLEANS ET ALS.; UNION CHURCH Extension Society of the Methodist Episcopal Church, Intervenor. } No. 12753.

To the honorable the chief justice and associate justices of
224 the supreme court of the State of Louisiana:

The petition of George L'Hote, plaintiff and appellee, and The Church Extension Society of the Methodist Episcopal Church, intervenor and appellant, respectfully shows:

That your petitioners are advised and believe that there is error in the opinion herein delivered and the judgment pronounced in this case, and that a rehearing should be granted petitioners upon the following grounds, viz:

1st. That the ordinance excluding lewd women from certain limits in the city of New Orleans violates the 14th amendment of the Constitution of the United States in this, that said ordinance and the enforcement thereof amounts to a taking of your petitioners' properties without compensation and without due process of law; that the use of plaintiff's property for residential purposes and intervenor's property for religious purposes is destroyed by the enforcement of said ordinance and the forcible compulsion of prostitutes to reside within their neighborhood and vicinage and ply their unholy vocation.

2nd. That when, by the use of adjoining property for the purposes contemplated by the ordinance, the property of others (your petitioners) is directly invaded by some agency that produces an

invasion of the property in the vicinage, and thereby impairs the use thereof, this is a taking of property which entitles the owners injured to compensation, especially where the injury is the direct and necessary result of the act complained of.

3rd. That when a municipal corporation creates a nuisance, it is liable for all the injury that results therefrom, and the denial of liability for such resulting injury in this case deprives petitioners of their property without due process of law.

4th. That the power conferred upon the mayor and police to forcibly eject prostitutes from the houses in which they now reside and compel them to remove within the new limits, wherein petitioners' properties are situated, violates the Constitution of the United States in that it is not due process of law within the intendment of the 14th amendment.

5th. That the court has grievously erred in defining and construing the police power of the State, which is limited and re-
225 stricted by the Constitution of the United States and cannot be exercised in violation of any of the rights granted or secured by the supreme law of the land. In the words of Mr. Justice Bradley, "The definition of the police power must, however, be taken subject to the condition that the State cannot in its exercise for any purpose whatever encroach upon the powers of the General Government or rights granted or secured by the supreme law of the land."

6th. The State cannot, under the exercise of its police power, violate the obligation of a contract or regulate interstate or foreign commerce by the enactment and enforcement of inspection laws, or deprive any person of his property without due process of law, or deny to any person within its jurisdiction the equal protection of the laws.

7th. The testimony is conclusive that the enforcement of this ordinance will destroy and render wholly unfit plaintiff's and intervenor's properties for the purposes for which they were erected.

8th. Bawdy-houses are public nuisances, *mala in se*, and cannot be authorized or regulated so as to impose upon the citizens within the designated limits the necessary and consequent burdens, injuries, and evils arising therefrom without compensation and without legal redress.

9th. That the refusal of the court to prevent and abate such nuisances deny petitioners the equal protection of the laws, in this, that persons residing out of the limits for abandoned women can prevent and suppress the establishment of bawdy-houses within their vicinage, while those within the limits are denied any redress. The owners of properties within the limits can validly contract by lease and otherwise with prostitutes for the renting of such dwellings, and can enforce payment of the rents due them under such contracts, while, on the contrary, owners of properties without the limits cannot lease or rent or recover rent for properties used and leased for such purposes under contract. Citizens outside of the limits can coercively compel prostitutes to remove therefrom, while those within the limits can exercise no such power.

Wherefore petitioners pray that a rehearing be granted unto them in this case; that the opinion herein pronounced be set aside, avoided, and reversed, and for all general and equitable relief.

(Signed) E. HOWARD McCALEB,
Attorney for Petitioners.

226 (Endorsed:) No. 12753. Supreme court of Louisiana. George L'Hote *et als. vs.* City of New Orleans *et als.*; Church Extension Society of the Methodist Episcopal Church, intervenor. Application for rehearing on behalf of plaintiff and appellee and intervenor and appellant. E. Howard McCaleb, att'y. Filed Dec. 6th, 1898. (Signed) Paul E. Mortimer, dep. clerk.

Motion and Order for Time to File Briefs.

Supreme Court of Louisiana.

No. 12753.

GEORGE L'HOTE ET ALS.
vs.
CITY OF NEW ORLEANS; CHURCH EXTENSION SOCIETY of the Methodist Episcopal Church, Intervenor. } No. 12753.

On motion of E. Howard McCaleb, Esq., of counsel for plaintiff and appellee and for intervenor and appellant, and on suggesting to the court that he has filed an application for rehearing in this case involving the consideration and determination of questions arising under the Constitution of the United States, that a delay should be allowed to enable him to prepare and print a brief in support of said application:

It is ordered that he be allowed a delay of seven days within which to prepare, print, and file briefs in support of said application.

(Endorsed:) No. 12753. Supreme court of La. Geo. L'Hote *et als. vs.* City of N. O. *et als.* Motion to grant delay to file briefs in support of application for rehearing. Entered & filed Dec'r 6, 1898 (Signed) T. McC. Hyman, clerk. (E. Howard McCaleb, att'y.)

Rehearing Refused.

(Extract from the Minutes.)

NEW ORLEANS, MONDAY, *January 9th*, 1899.

The court was duly opened pursuant to adjournment.

227 Present: Their honors Lynn B. Watkins, Joseph A. Breaux, Henry C. Miller, Newton C. Blanchard.

Absent: Francis T. Nicholls, chief justice.

GEORGE L'HOTE
vs.
CITY OF NEW ORLEANS ET ALS. } No. 12753.

It is ordered that the rehearing applied for in this case be refused.

Petition for Writ of Error.

Supreme Court of the State of Louisiana.

GEORGE L'HOTE
vs.
CITY OF NEW ORLEANS ET ALS.; CHURCH EXTENSION Society of the Methodist Episcopal Church, Intervenor. } No. 12753.

To the honorable the chief justice and associate justices of the supreme court of the State of Louisiana:

The petition of George L'Hote, defendant and appellee, and The Church Extension Society of the Methodist Episcopal Church, intervenor and appellant, in the above entitled and numbered case, respectfully shows:

That on the 21st day of November, 1898, this honorable court rendered a decree and entered judgment herein — favor of defendants and against plaintiff and intervenor, your petitioners, which said decree and judgment became final on the 9th day of January, 1899.

That in said judgment and decree and the proceedings prior thereto certain errors were committed to the prejudice of your petitioners, George L'Hote, plaintiff, and The Church Extension Society of the Methodist Episcopal Church, intervenor, all of which will more in detail appear from the assignment of errors, which is filed with this petition.

That in this case plaintiff and intervenor have claimed rights, privileges, and immunities under the Constitution of the United States, and that the decree and judgment of this honorable court is adverse to the same.

228 That there was drawn in question the validity of ordinances Nos. 13032 and 13485, council series, of the city of New Orleans, passed under the authority of the State of Louisiana, on the ground of there being repugnant to the Constitution of the United States, especially of the fourteenth amendment to the Constitution of the United States, and that the decree and judgment of this honorable court was in favor of their validity and against the title, right, privilege, and immunity specially set up and claimed by your petitioners, wherein a manifest error has happened, to the great damage of your petitioners, and that the decree and judgment of this honorable court was adverse to the same.

That petitioners desire a writ of error from the said decree and judgment of this honorable court to the Supreme Court of the United States.

Wherefore petitioners pray that a writ of error to operate as a supercedeas may issue in this behalf to the Supreme Court of the United States for the correction of errors so contained, and that a transcript of the record of the proceedings and papers in this case, duly authenticated, may be sent to the said Supreme Court of the

United States; that pending said writ of error writs of injunction herein issued may be maintained and continued in force.

(Signed) E. HOWARD McCALEB,
Attorney for George L'Hote, Plaintiff, and The Church Extension Society of the Methodist Episcopal Church, Intervenor.

Order.

Let a writ of error be granted unto petitioners, George L'Hote, plaintiff, and The Church Extension Society of the Methodist Episcopal Church, intervenor, to the Supreme Court of the United States, and, pending said writ of error, let the writs of injunction herein issued be maintained and continue in force; bond fixed at $ three thousand dollars, all as prayed for and according to law.

(Signed) L. B. WATKINS,
Acting Chief Justice Supreme Court of Louisiana.

New Orleans, January 9, 1899.

229 (Endorsed:) No. 12753. Supreme court of Louisiana. George L'Hote *vs.* City of New Orleans *et al.*; Church Extension Society of the Methodist Episcopal Church, intervenor. Application for writ of error. E. Howard McCaleb, att'y. Filed Jan'y 9, 1899. (Signed) T. McC. Hyman, clerk.

Assignment of Errors.

Supreme Court of the State of Louisiana.

GEORGE L'HOTE *vs.* CITY OF NEW ORLEANS ET ALS.; CHURCH EXTENSION Society of the Methodist Episcopal Church, Intervenor.	No. 12753.

George L'Hote, plaintiff, and The Church Extension Society of the Methodist Episcopal Church, intervenor, in connection with their petition for a writ of error, make the following assignment of errors, which they aver are to be found in the opinion, judgment, and decree of this honorable court herein:

1. That the court erred in holding that the ordinances Nos. 13032 and 13485, council series, of the city of New Orleans, do not deprive plaintiff and intervenor of the equal protection of the law.

2. The court erred in refusing to hold that the said ordinances and the power conferred upon the mayor of the city of New Orleans thereby were not "due process of law."

3. The court erred in holding that the said ordinances, Nos. 13032 and 13485, council series, of the city of New Orleans, did not deprive the plaintiff and intervenor of their property without due process of law.

4. That the court erred in holding that said ordinances were enacted under the police power of the city of New Orleans and the

injuries suffered by plaintiff and intervenor were *damnum absque injuria.*

5. That the court erred in refusing to hold that the ordinances attacked make arbitrary and unjust discriminations against intervenors, who belong to the colored race.

230 6. That the court erred in extending the police power of the city of New Orleans so as to violate rights guaranteed or secured by the Constitution of the United States, the supreme law of the land.

7. The court erred in refusing to hold that the ordinances 13032 and 13485, council series, of the city of New Orleans violate the 14th amendment to the Constitution of the United States.

8. That the court erred in rendering a decree and entering judgment herein in favor of defendants and against plaintiff and intervenor.

(Signed) E. HOWARD McCALEB,
Attorney for Plaintiff and Intervenor.

(Endorsed:) No. 12753. Supreme court of Louisiana. George L'Hote *vs.* City of New Orleans *et als.*; Church Extension Society of the Methodist Episcopal Church, intervenor. Assignment of errors. E. Howard McCaleb, att'y. Filed 9th Jan'y, 1899. (Signed) T. McC. Hyman, clerk.

Copy of Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court, in which George L'Hote is plaintiff, and The Church Extension Society of the Methodist Episcopal Church is intervenor, and The City of New Orleans and Dexter S. Gaster are defendants, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the said above-named parties, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or

231 wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of the clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said George L'Hote and the Church Extension Society of the Methodist

Episcopal Church, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the ninth (9th) day of January, in the year of our Lord one thousand eight hundred and ninety-nine.

(Signed) E. R. HUNT,
[SEAL.] *Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.*

Allowed by—
(Signed) L. B. WATKINS,
Acting Chief Justice.

(Endorsed:) No. 12753. Supreme court of Louisiana. George L'Hote, plaintiff in error, *versus* City of New Orleans *et al.*, defendants in error. (Writ of error.) Copy of a writ of error lodged in the clerk's office of the supreme court of Louisiana, in pursuance of the statute in such cases made and provided, this 9th day of
232 January, one thousand eight hundred and ninety-nine. (Signed) E. Howard McCaleb, attorney of plaintiff in error. Filed Jan'y 9, 1899. (Signed) T. McC. Hyman, clerk.

Bond for Writ of Error

Supreme Court of the State of Louisiana.

GEORGE L'HOTE
vs.
CITY OF NEW ORLEANS ET AL.; CHURCH EXTENSION Society of the Methodist Episcopal Church, Intervenor. } No. 12753.

Know all men by these presents that we, George L'Hote, residing in the city of New Orleans, State of Louisiana, and The Church Extension Society of the Methodist Episcopal Church, a corporation duly chartered and organized under the laws of the State of Pennsylvania, as principals, and Charles Long and Bienamie Gentile, as sureties, are held and firmly bound unto the defendants, The City of New Orleans and Dexter S. Gaster, in the full and just sum of three thousand dollars, $3,000.00, to be paid to the said defendants and each of them, their attorneys, executors, administrators, or assigns; to which payment, well and truly to be made,

we bind ourselves, our heirs, executors, administrators, and assigns, jointly and severally, by these presents.

Sealed with our seals and dated this 9th day of January, in the year of our Lord eighteen hundred and ninety-nine.

Whereas lately, in the supreme court of Louisiana, in a suit pending in said court, wherein George L'Hote is plaintiff, The Church Extension Society of the Methodist Episcopal Church is intervenor, and said City of New Orleans and Dexter S. Gaster are defendants, judgment was rendered against said George L'Hote and the said Church Extension Society of the Methodist Episcopal Church, and the said George L'Hote and the Church Extension Society of the Methodist Episcopal Church having obtained a writ of error and filed a copy thereof in the clerk's office of the said supreme court of Louisiana to reverse the judgment in the aforesaid suit, and a citation directed to the said State of Louisiana,
citing and admonishing it to be and appear at the Supreme
233 Court of the United States, to be holden at Washington,
within thirty days from January 9th, 1899:

Now, the condition of the above obligation is such that if the said George L'Hote and The Church Extension Society of the Methodist Episcopal Church shall prosecute their writ to effect and answer all damages and cost if they fail to make their plea good, then the obligation to be void; else to remain in full force and virtue.

(Signed) GEORGE L'HOTE,
Pp. E. HOWARD McCALEB, *Att'y.*
Do. CHURCH EXTENSION SOCIETY OF METHODIST EPISCOPAL CHURCH,
Per E. HOWARD McCALEB, *Att'y.*
Do. CHARLES LONG.
Do. BENIAMINE GENTILE.

Approved:
(Signed) L. B. WATKINS,
Acting Chief Justice.

New Orleans, La., Jan'y 9, 1899.

STATE OF LOUISIANA, }
City of New Orleans. }

Personally appeared before me, the undersigned authority, Charles Long and Bienamie Gentile, who, being duly sworn, depose and say that they are the sureties on the within bond; that they reside at New Orleans, Louisiana, and are each worth the full sum of $3 three thousand dollars over and above all their debts and liabilities and property exempt from execution.

(Signed) CHARLES LONG.
Do. BIENAMIE GENTILE.

[SEAL.]

Sworn and subscribed before me this 9th day of January, 1899.

(Signed) T. McC. HYMAN,
Clerk Supreme Court La.
[SEAL.]

(Endorsed:) No. 12753. Supreme court of Louisiana.
234 George L'Hote *vs.* City of New Orleans *et al.*; Church Extension Society of the Methodist Episcopal Church, intervenor. Bond for writ of error. Filed Jan'y 9, 1899. (Signed) T. McC. Hyman, clerk.

Clerk's Certificate.

UNITED STATES OF AMERICA, }
State of Louisiana. }

Supreme Court of the State of Louisiana.

I, Thomas McCabe Hyman, clerk of the supreme court of the State of Louisiana, do hereby certify that the foregoing two hundred and thirty-four pages do contain a full, true, and complete copy of the transcript of the proceedings had in the civil district court for the parish of Orleans in a certain suit wherein George L'Hote was plaintiff, and The City of New Orleans and Dexter S. Gaster were defendants, and The Church Extension Society of the Methodist Episcopal Church was intervenor, and also of all the proceedings had in this supreme court on the appeals taken by the said defendants and by the said intervenor, which appeals are now on the files thereof under No. 12753.

In testimony whereof I have hereunto set my hand and affixed the seal of this honorable court, at the city of New Orleans, this 21st day of January, in the year of our Lord one thousand eight hundred and ninety-nine, and in the one hundred and twenty-third year of the Independence of the United States of America.

Seal Supreme Court of the State of Louisiana.

T. McC. HYMAN, *Clerk.*

235 *Certificate of the Chief Justice.*

I, Francis Tillou Nicholls, chief justice of the supreme court of the State of Louisiana, do hereby certify that Thomas McCabe Hyman is clerk of the supreme court of the State of Louisiana, at New Orleans; that the signature of Thomas McCabe Hyman to the foregoing certificate is in the proper handwriting of him, the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

In testimony whereof I have hereunto set my hand and seal, at the city of New Orleans, this 21st day of January, anno Domini eighteen hundred and ninety-nine, and in the one hundred and twenty-third year of the Independence of the United States of America.

Seal Supreme Court of the State of Louisiana.

FRANCIS T. NICHOLLS,
Chief Justice.

236 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to the City of New Orleans, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, within 30 days from date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, at New Orleans, wherein George L'Hote, residing in the city of New Orleans, State of Louisiana, and The Church Extension Society of the Methodist Episcopal Church, a corporation duly chartered and organized under the laws of the State of Pennsylvania, are plaintiffs in error, and The City of New Orleans and Dexter S. Gaster, superintendent of police, are defendants in error, to show cause, if any there be, why the judgment rendered against the said George L'Hote, plaintiff, and The Church Extension Society of the Methodist Episcopal Church, intervenor, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the State of Louisiana.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 9th day of January, in the year of our Lord one thousand eight hundred and ninety-nine.

L. B. WATKINS,
Acting Chief Justice.

237 [Endorsed:] R. W. C. Flower. Blanc. Jan'y 13, '99. Supreme court of Louisiana. No. 12753. George L'Hote *vs.* City of New Orleans *et al.*; Church Extension Society of the Methodist Episcopal Church, intervenor. Citation. Supreme court of Louisiana. Filed —— —, 1899. T. McC. Hyman, clerk.

Sheriff's Return.

Received Friday, Jan. 13, 1899, and on the same day, month, and year I served a copy of the within citation on The City of New Orleans, defendant herein, by personal service on W. C. Flower, its mayor. Returned the same day.

Sheriff's fees, 50c.

JAMES ARTHUR BLANC,
Deputy Sheriff for Parish of Orleans.

NEW ORLEANS, *January 13th*, 1899.

James Arthur Blanc, deputy civil sheriff for the parish of Orleans, State of Louisiana, being sworn, deposeth and says that he made a personal service of a copy of the within citation on Walter C. Flower, mayor of the city of New Orleans, at the date above mentioned.

JAMES ARTHUR BLANC,
Deputy Civil Sheriff for the Parish of Orleans.

Sworn to and subscribed before me, at the city of New Orleans, this seventeenth day of January, A. D. 1899.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Deputy Clerk.

Endorsed on cover: File No 17,290. Louisiana supreme court. Term No., 204. George L'Hote and The Church Extension Society of the Methodist Episcopal Church, plaintiff- in error, *vs.* The City of New Orleans *et al.* Filed February 6th, 1899.

FILED
FEB 17 1899
JAMES H. McKENNEY,
Clerk

No. 1065. 204

Brief of McCaleb for P. C. (m
105

Filed Feb. 17, 1899.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1898.

No. ——.

GEORGE LHOTE, PLAINTIFF IN ERROR,

versus

CITY OF NEW ORLEANS, DEFENDANT IN ERROR.

CHURCH EXTENSION SOCIETY OF THE METHODIST EPISCOPAL CHURCH, INTERVENOR, PLAINTIFF IN ERROR.

Brief for Plaintiffs in Error, on Motion to Dismiss or Affirm.

E. HOWARD McCALEB.

A. W. HYATT STAT'Y MFG. CO., LTD., N. O.—80,062.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1898.

No. ——.

GEORGE LHOTE, PLAINTIFF IN ERROR,

versus

CITY OF NEW ORLEANS, DEFENDANT IN ERROR.

CHURCH EXTENSION SOCIETY OF THE METHODIST EPISCOPAL CHURCH, INTERVENOR, PLAINTIFF IN ERROR.

Brief for Plaintiffs in Error, on Motion to Dismiss or Affirm.

The General Assembly of the State of Louisiana passed Act No. 45, approved July 7th, 1896, entitled "An act to incorporate the city of New Orleans, provide for the government and administration of the affairs thereof," etc. By the 15th section of this statute, it is provided that: "The Council shall also have power, * * * (11) to regulate the police of * * * houses of prostitution and assignation, and to close such houses from certain limits, and shall have power to exclude the same, and to close houses and places for the sale of intoxicating liquors when the public safety may require it, and to authorize the mayor and police to close such places."

The Common Council of the city of New Orleans, claiming to act under the power conferred by this statute, on the 29th of July, 1897, enacted Ordinance No. 13,082, C. S., which, in its first section, locates the limits within which lewd women may dwell, and excludes them from other portions of the city. The

section makes its unlawful for any person to rent, lease or hire any house, building or room to any woman or girl notoriously abandoned to lewdness, or for immoral purposes, outside the limits specified in section one. The fifth section provides that it shall be unlawful for any party or parties to establish or carry on a house of prostitution or assignation without the limits specified in section one. The sixth section authorizes the mayor to order the occupants of said houses, buildings or rooms to remove within a delay of five days by service of notice upon the occupants in person, or by posting the notice on the door of the house, etc. By the seventh section it is provided that, in the event of the refusal of such occupants of such houses to remove, the mayor is authorized to place a policeman at the door of such premises to warn away all parties who shall undertake to enter. The eighth section provides for the punishment of these people who violate the provisions of the ordinance, or who disturb the tranquility of the neighborhood, by fine, to be imposed by the recorder of the city.

By a subsequent ordinance, No. 13,485, C. S., the limits designated were changed.

George Lhote, whose residence is situated within the new limits thus designated for lewd women, and in the square bounded by St. Louis, Franklin, Treme and Toulouse streets, second district of New Orleans, sued out a writ of injunction in the Civil District Court for the Parish of Orleans, Louisiana, to prevent the execution of the ordinances, above referred to. Among other things, he averred "that the enforcement of said ordinances in the manner provided therein, violates the Constitution of the United States and the laws of this State, in that they deprive petitioner of his property without due process of law, and amount to a taking or damaging the property of petitioner for public purposes without just and adequate compensation being first paid. That said ordinances are illegal, unreasonable and oppressive, in that, if executed, they will render your petitioner's dwelling house, and those of his neighbors, unfit and unsuitable for the occupancy of their families, wives and children, and wholly valueless for the purposes for which they were constructed, and have heretofore been used."

The Church Extension Society of the Methodist Episcopal Church filed its petition of intervention, averring that it is a corporation organized under the laws of the State of Pennsylvania, owning two lots of ground on which is situated a building occupied for church purposes, wherein a colored congregation, composed of some six hundred members, worship and assemble on each and every Sabbath, and on Tuesday and Friday evenings, as well as on other stated occasions. That besides the religious services conducted in said church, a Sunday school is organized and established, which is attended by one hundred and seventy children, who receive religious instructions and teachings. It joined the plaintiff in injunction, alleging that said ordinances violate the provision of the Constitution of the United States, and demanded that they be declared unconstitutional. By a subsequent petition, the Church Extension Society more specifically enumerated the injury and damage to its property by the location of lewd and abandoned women in its vicinity.

In the Civil District Court for the Parish of Orleans judgment was rendered, perpetuating the injunction sued out by the plaintiff and dismissing the intervention of the Church Extension Society. The opinion of the court will be found in the record.

From a judgment in favor of the plaintiff, the city of New Orleans appealed, and the intervenor, the Church Extension Society, also appealed to the Supreme Court of the State of Louisiana.

In the State Supreme Court the case was argued and submitted on April 20, 1898, and held under advisement until November 21st, 1898, before it was decided.

The State Supreme Court, in its opinion, among other things, say:

"It does not, however, readily occur to the mind that confining houses of this character within certain limits by the appropriate ordinance, is violative of any of the constitutional guarantees invoked in the discussion before us." The opinion further

holds that, "to whatever extent, however, the right of private property may be deemed affected by this last ordinance, it must be borne in mind that it is a great power of government given to preserve the morals, health and lives of the community that requires the surrender of rights by the citizen, supposed to be exacted by this ordinance. To that police power all must yield obedience. As put in the text-books and enforced by all decisions: 'Every citizen holds his property subject to the proper exercise of the police power exerted either by the legislature or by the subordinate political corporations. It is settled that police laws and regulations, though they may disturb the enjoyment of individual rights, are not unconstitutional. They do not expropriate property for public use. If the individual sustains any injury it is deemed *damnum absque injuria*, or, in the theory of the law, the injury to the owner is deemed compensated by the public benefit the regulation is designed to subserve.'"

The decree of the Supreme Court reversed the judgment of the lower court in favor of plaintiff, dissolved the injunction and dismissed his suit, and affirmed the judgment of the lower court dismissing the intervention, and granting the injunction issued on the prayer of the Church Extension Society of the Methodist Episcopal Church.

A rehearing was applied for, which was refused, and, thereupon, the plaintiff, George Lhote, and the intervenor, the Church Extension Society of the Methodist Episcopal Church, sued out this writ of error, claiming rights protected and secured under the Constitution of the United States, especially the Fourteenth Amendment thereof.

They assign as error:

"1. That the court erred in holding that the Ordinances Nos. 13,032 and 13,485, Council Series, of the city of New Orleans, do not deprive plaintiff and intervenor of the equal protection of the law.

"2. The court erred in refusing to hold that the said ordinances and the power conferred upon the mayor of the city of New Orleans thereby was not due process of law.

"3. The court erred in holding that the said Ordinances Nos. 13,032 and 13,485, Council Series, of the city of New Orleans, did not deprive the plaintiff and intervenor of their property without due process of law.

"4. That the court erred in holding that said ordinances

were enacted under the police power of the city of New Orleans and the injuries suffered by plaintiff and intervenor were *damnum absque injuria.*

"5. That the court erred in refusing to hold that the ordinances attacked make arbitrary and unjust discriminations against intervenors, who belong to the colored race.

"6. That the court erred in extending the police power of the city of New Orleans so as to violate rights guaranteed by the Constitution of the United States, the supreme law of the land.

"7. The court erred in refusing to hold that the Ordinances, 13,032 and 13,485, Council Series, of the city of New Orleans, violate the 14th amendment to the Constitution of the United States.

"8. That the court erred in rendering a decree and entering judgment herein in favor of defendants and against plaintiff and intervenor." See Record.

ON MOTION TO DISMISS.

The undersigned, before the return day of the record to this court, and before the same was filed here or printed, was served with a motion "to dismiss the writ of error in the above entitled cause, for want of jurisdiction, because the judgment or decree from which the said appeal purports to have been taken is the judgment or decree of the Supreme Court of one of the United States, to-wit: The Supreme Court of the State of Louisiana, and because, although the record in the said cause may show that this court has jurisdiction in the premises, yet, it is manifest, that said appeal was taken for delay only."

In other words, a motion is made to dismiss the writ of error for want of jurisdiction, and in the very next breath it is admitted that this court has jurisdiction. The motion to dismiss is *frivolous* upon its face.

Ever since the passage of the judiciary act of 1789, this Court has been vested with jurisdiction to review a final judgment or decree in any suit in the highest court of a State where is drawn in question the validity of or an authority exercised under any State, on the ground of there being repugnant to the Constitution or laws of the United States, and the decision is in favor of their validity (section 709, R. S., U. S.); or where any right, or immunity is claimed under the Constitution of the

United States, and the decision is against the right set up or claimed by either party under such Constitution, and this court is vested with power to re-examine, reverse or affirm upon a writ of error.

Upon face of the record there can be no doubt that a federal question was raised in the pleadings, decided by the highest court of the State, and a writ of error allowed by the Chief Justice of the Supreme Court of Louisiana from this decision.

Under the rule allowing a motion to affirm to be united with a motion to dismiss, a motion to affirm cannot be entertained unless there appears on the record *some color of right to a dismissal.* Richards vs. Mackall, 113 U. S. 539; Whitney vs. Cook, 97 U. S. 607; Metcalfe vs. The Alaska, 130 U. S. 201.

ON MOTION TO AFFIRM.

I.

The Fourteenth Amendment was primarily intended to secure the rights and the equality before the law of the colored race. The words of the amendment, it is true, are prohibitory, but they contain a necessary implication of a positive immunity, or right, most valuable to the colored race, the right to exemption from unfriendly legislation against them, exemption from legal discrimination, implying inferiority in civil society, lessening the security of their enjoyment of the rights which others enjoy, and discriminations which are steps towards reducing them to the condition of a subject race. Strauder vs. West Virginia, 100 U. S. 303.

An examination of the history of the causes which led to the adoption of those amendments and of the amendments themselves, demonstrates that the main purpose of all the three last amendments was the freedom of the African race, the security and perpetuation of that freedom, and their protection from the oppressions of the white men who had formerly held them in slavery. Slaughter House Case, 16 Wall. 36.

Now, it appears that the congregation composing the Church Extension Society, and the children attending the Sunday school in this church, within the limits established for lewd women by the ordinance in question, all belong to the colored race, and although the church is the property of a corporation, it has been held that the word "person" used in the Fourteenth Amendment includes a corporation. Santa Clara Co. vs. Southern Pacific Co., 118 U. S. 394.

(*a*) The ordinance in question denies to plaintiff and intervenor the equal protection of the laws; thus, the owner of property within the limits, can validly lease the same for purposes of prostitution.

By section one of the Ordinance No. 13,032, the prohibition to rent, lease or hire any house, building or room, is directed exclusively against persons outside of the limits specified in section one. Not only can the owners of the property within the limits lease their houses, rooms and buildings for immoral purposes, but under the decision rendered by the Supreme Court of Louisiana in Lyman vs. Townsend, 24 An. 525, they can enforce the payment of their rent. In that case the court held that:

"A person owning a house in the vicinity of New Orleans situated *within the limits* of the district where the keeping of houses of prostitution are allowed by the city, may lease his house for that purpose and recover the rent from the lessee. In such a case, the lessee cannot be permitted to plead the immorality of her own calling as a shield against the payment of the rent of the property which she has used."

Whereas, the property owner beyond the limits cannot make or enforce any such contract.

(*b*) Outside of the limits designated for lewd women the keeping of houses of prostitution is forbidden under severe penalties, whereas within the limits the lewd and abandoned can ply their vocation with impunity. See State of Louisiana vs. Mack, 41 An. 1079. In other words, it is made a penal offense for prostitutes "to live, move or have their being" outside of the limits assigned, while within this "charmed circle" they can ply their nefarious vocation *ad libitum*.

II.

The powers conferred upon the mayor by this ordinance are of the most extraordinary character. They cannot be called "due process of law," for they authorize him to act, direct prostitutes to remove within a delay of five days, close up the house, building or room, and place a policeman at the door of such premises to warn away all parties who undertake to enter.

The State of California attempted under her so-called "police power" to exclude lewd and debauched women from being brought into the State by vessels coming from any foreign port, and directed the Commissioner of Immigration to exclude such women unless the captain of the vessel gave a bond of $500.00, that such passenger should not become a public charge, or is a convicted criminal or is a lewd and debauched woman. This Court did not hesitate to declare this statute a violation of the Federal Constitution. Chy Lung vs. Freeman, 92 U. S. 275.

The extraordinary powers conferred upon the mayor by the ordinance in question is not "due process of law."

"Due process of law requires an orderly proceeding adapted to the nature of the case, in which the citizen has an opportunity to be heard, and to defend, enforce and protect his rights. A hearing or an opportunity to be heard is absolutely essential."

Black's Constitutional Law, p. 481, § 212.

In Pennoyer vs. Neff, 95 U. S. 715, this Court say the term "due process of law," when applied to judicial proceedings, means a course of legal proceedings, according to those rules and principles which have been established by our jurisprudence for the protection and enforcement of private rights. To give such proceedings any validity there must be a competent tribunal to pass upon the subject-matter.

Here, the poor prostitute is not given a hearing or allowed a trial, but is turned over to the tender mercies of the mayor and his band of janizaries—the police—to be disposed of as, in their judgment, they may see fit. Nor are owners of property within the limits for lewd women in any better condition. Their property is taken without due process of law.

"The constitutional guaranty that no person shall be deprived of his property without due process of law, may be violated without the physical taking of the property for public or private use. Property may be destroyed, or its value may be annihilated; it is owned and kept for some useful purpose, and it has no value unless it can be used. Its capability for enjoyment and adaptability to some use and essential characteristics and attributes, without which property cannot be conceived, and hence any law which destroys it or its value, or takes away any of the essential attributes, deprives the owner of his property." Black's Constitutional Law, p. 484.

All of these extraordinary and unconstitutional proceedings are attempted to be justified upon the theory that every citizen holds his property subject to the proper exercise of the police power.

The Fourteenth Amendment to the Constitution of the United States provides: "Nor shall any State deprive any person of property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." To escape from the prohibitions contained in the provisions of the Federal Constitution, we are told that the city of New Orleans, acting as an agent of the State, *can*, under its indefinable police power, invade the sacred rights of property, render plaintiff's residence and intervenor's church totally unfit for purposes for which they were erected, turn the plaintiff and his family out of their home, and the congregation of the church out of its sanctuary, by placing them within the limits where lewd women are compelled to dwell, and ply their vocation.

We contend that the city of New Orleans, in dedicating the area prescribed in the ordinance for the residence of bawds and prostitutes, infringes plaintiff's and intervenor's rights of property.

"There may be a *taking* of property within the *spirit* as well as within the strict letter of the Constitution, where the injury is a mere result of the use of other property under a legislative grant. But I understand the rule to be, that when, by the use of adjoining property, for the purposes contemplated by the grant, the property of others is directly invaded by some physical agency that produces an actual physical invasion of the property

over which it passes, or is sent, and thereby impairs the use of the property, that this is a *taking* of property which entitles the owner of the property injured to compensation, even if the invasion and damage is only occasional. But where the injury is a *remote* consequence of the act, and not a direct or necessary result, and does not operate as a physical interference with property, or impose upon it an onerous servitude, and only occurs at intervals, it is strictly consequential damage that cannot be the subject of an action."

Wood on the Law of Nuisances, section 595.

"If property in land consists in certain essential rights, and a physical interference with the land subverts one of those rights, such interference takes, '*pro tanto*,' the owner's property. The right of indefinite user is an essential quality or attribute of absolute property, without which absolute property can have no legal existence. Use is the real side of property. Eaton vs. Boston, Concord & Montreal Railroad, 51 N. H.

"As to the ownership of the soil of the street, the question is of no practical importance. The right of an owner of a lot in a town to the use of an adjoining street, *is as much property* as the lot itself, and the legislature can no more deprive a man of one than the other, without compensation." Lackland vs. R. R. Co., 31 Mo. 180.

"A municipal corporation is liable to indictment for a public nuisance maintained by it, and is also liable for damages at the suit of an individual who sustains a special damage therefrom. * * * If it neglects nuisances injurious to the health or morals of its citizens, which it has the power to remove, or if it permits any public nuisance to exist upon its property, it may be indicted and punished the same as an individual." Wood on Nuisances, section 743.

"When a municipal corporation has ample power to remove a nuisance that is injurious to the health (or morals), endangers the safety, or impairs the convenience of its citizens, or when, in the prosecution of a public work, it creates a nuisance, it is liable for all the injuries that result from a failure on its part to properly exercise the power possessed by it, and for injuries resulting from its wrongful acts. *Idem*, 744.

"It may not always be easy to determine what really amounts to a *taking* of property, but it is safe to say that, whenever the exercise of the right operates to destroy an easement incident to real property, or amounts to an actual physical invasion of property by some agency that produces injury thereto, or imposes a burden thereon, that is a taking of property. There need not be an exclusive appropriation of the property, but such an

interference with the beneficial use thereof, as operates an essential abridgement of the owner's rights incident to, and an essential part of, the estate." *Idem*, 755.

In Pumpelly vs. Green Bay Co., 13 Wall., p. 166, this Court said:

"It is not necessary that property should be absolutely *taken*, in the narrowest sense of that word, to bring the case within the protection of this constitutional provision. There may be such serious interruption to the common and necessary use of property as will be equivalent to a *taking*, within the meaning of the Constitution."

III.

But it is said that the city exercises this peculiar governmental function by virtue of its unlimited, indefinable police power.

The police power does not extend to the supervision, regulation and inspection of prostitutes. The city of New Orleans has no lawful authority to regulate prostitution.

"Police supervision of prostitutes, so universal a custom in the European cities, is sometimes considered in the same light, but is essentially different. Prostitution is an offense against the law, and these city ordinances render lawful the practice of authorizing its prosecution under certain limitations and restrictions, among which are police supervision and inspection. But the subjection to this control is voluntary on the part of the prostitutes, in order to render practices lawful which are otherwise unlawful. It is rather in the character of a license, under certain restraints, to commit an offense against public morality." Tiedman's Limitations of Police Power, p. 131, paragraph 49.

"The police power of the government cannot be brought into operation for the purpose of exacting obedience to the rules of morality and banishing vice and sin from the world." *Idem*, p. 150.

"It has been maintained in a previous section that police power does not extend to the punishment of vice. No law can make vice a crime, unless it becomes, by its consequence, a trespass upon the rights of the public. But while this may be true, no man can claim the right to make a trade of vice. A business that panders to vice may and should be strenuously prohibited, if possible. Fornication is a most grievous and common vice. Under this view of all the limitations of po-

lice power, it would be commendable as well as permissible to prohibit the keeping of houses of ill-fame. * * * Vice as vice is not subject to police regulations, but a business may always be prohibited whose object is to furnish means for the indulgence of a vicious propensity or desire." *Idem*, p. 391, paragraph 102.

Fortunately for us, this court has put a limit even upon the police power exercised by a State, or a municipality created by it.

In the case of the New Orleans Gas Light Company vs. Louisiana Light Company, 115 U. S. 650, it was distinctly asserted that:

"Definitions of the police power must, however, be taken subject to the condition that the State cannot, in its exercise, for any purpose whatever, encroach upon the powers of the general government, or rights granted or secured by the supreme law of the land;" and the court referred to the cases of Henderson & Co. vs. Mayor of New York, 92 U. S. 259; Chy Lung vs. Freeman, 92 U. S. 275; and R. R. vs. Husen, 95 U. S. 465.

"If a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution." Mulger vs. Kansas, 123 U. S. 661.

"The police power cannot be set up to control the inhibitions of the Federal Constitution, or the powers of the United States government created thereby." Walling vs. Michigan, 116 U. S. 446. See, also, Scott vs. Donald, 165 U. S. 58.

The State cannot under the exercise of its police power obstruct or interfere with foreign or interstate commerce, nor can it impair the obligation of contracts, nor deprive any one of his property without due process of law, nor deny to any one within its jurisdiction the equal protection of the laws.

IV.

The testimony is conclusive that the enforcement of this ordinance will disturb and render plaintiff's and intervenor's properties wholly unfit for the purposes for which they were erected. Worse than this, to recognize the right of the city to create an asylum for abandoned women, and to dedicate a por-

tion of her territory for the residence of this class of people and to permit them to there ply their unholy vocation, is a violation of the principles of the Christian religion, which the Supreme Court of the United States say is the foundation of our government and the civilization which it has produced in the Western world.

"The organization of a community for the spread and practice of polygamy is, in a measure, a return to barbarism. It is contrary to the spirit of the Christianity and of the civilization of the Western world. The question, therefore, is whether the promotion of such a nefarious system and practice, so repugnant to our laws and to the principles of our civilization, is to be allowed to continue by the sanction of the government itself, and whether the funds accumulated for that purpose shall be restored to the same unlawful uses heretofore, to the detriment of the true interests of civil society." Mormon Church vs. United States, 136 U. S. 49.

"A house of ill-fame or bawdy house, as it is more commonly called in the law, is a public nuisance, and the keeper thereof may be indicted therefor whether the house is located in a city or a forest. It is *mala in se*, and the court does not need to be informed of its effects upon society, for the common experience of mankind shows that the proper and natural consequences of such an establishment will be detrimental to the morals and social welfare of the public." Wood on Nuisances, section 29.

"No nuisance, whose effect is merely moral, can be abated, except by the courts and by the courts only, by the administration of such punishment as will be likely to cause the parties to desist. It is very laudable on the part of the people, in any community, to desire to be rid of these moral pests, and the indignation experienced by them at the presence of such institutions in their midst is just; but they will not be justified in attempting to check the evil by any riotous or unlawful means." *Idem*, section 32.

In the cases of Ely vs. the Supervisors of Niagara Co., 36 N. Y. 297, and in Welch vs. Stowell, 2 Douglas (Mich.), 332, it was held that "individuals have not the right to abate a nuisance resulting from the keeping of a bawdy house by demolishing the buildings, or otherwise interfering therewith; that the remedy is by indictment."

We, therefore, seriously maintain: (1st) that the ordinance complained of denies to plaintiff and intervenor the equal pro-

tection of the laws. Immoral contracts and immoral persons are permitted in one portion of the city of New Orleans, and prohibitd in the others (Yick Wo vs. Hopkins, 118 U. S. 356). (2d) The ordinance attacked makes arbitrary and unjust discriminations against intervenors, who belong to the colored race—their church, and their church alone is subjected to the contamination of lewdness and immorality, while all the white churches in the city are exempted from such burdens. (3d) It give to the mayor and police extraordinary powers to arrest and condemn without hearing or trial. (4th) It deprives plaintiff and intervenor of their property, by destroying the use for which they were constructed, "without compensation" and without "due process of law." (5th) It authorizes the city of New Orleans to license, create and maintain public brothels within the area designated, and denies to plaintiff and intervenor the right to have such nuisances removed or abated, by the preventive writ of injunction. High on Injunctions, §782; Hamilton vs. Whitridge, 11 Md. 128. (6th) It extends the *police power*, so as to violate rights guaranteed or secured by the Constitution of the United States—the supreme law of the land. (7th) Instead of prohibiting and suppressing, it tolerates and regulates vice.

Respectfully submitted,

E. HOWARD McCALEB.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 19[illegible]

No. [illegible]

GEORGE LEIDY AND CRESCENT EXTERMINATOR COMPANY,
Defts.-Plaintiffs in Error,

vs.

CITY OF NEW ORLEANS, Defendant in Error.

Brief for Plaintiffs in Error.

E. HOWARD McCALEB,

E. W. STATE STAFF PRINTING CO., LTD., N. O.—20,100.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1899.

No. 204.

GEORGE LHOTE AND CHURCH EXTENSION SOCIETY, ETC., PLAINTIFFS IN ERROR,

versus

CITY OF NEW ORLEANS, DEFENDANT IN ERROR.

Brief for Plaintiffs in Error.

The General Assembly of the State of Louisiana passed Act No. 45, approved July 7th, 1896, entitled "An act to incorporate the city of New Orleans, provide for the government and administration of the affairs thereof," etc. By the 15th section of this statute, it is provided that: "The Council shall also have power, * * * (11) to regulate the police of * * * houses of prostitution and assignation, and to close such houses from certain limits, and shall have power to exclude the same, and to close houses and places for the sale of intoxicating liquors when the public safety may require it, and to authorize the mayor and police to close such places."

The Common Council of the city of New Orleans, claiming to act under the power conferred by this statute, on the 29th of July, 1897, enacted Ordinance No. 13,032, C. S., which, in its first section, locates the limits within which lewd women may dwell, and excludes them from other portions of the city. The section makes it unlawful for any person to rent, lease or hire any house, building or room to any woman or girl notoriously

abandoned to lewdness, or for immoral purposes, outside the limits specified in section one. The fifth section provides that it shall be unlawful for any party or parties to establish or carry on a house of prostitution or assignation without the limits specified in section one. The sixth section authorizes the mayor to order the occupants of said houses, buildings or rooms to remove within a delay of five days by service of notice upon the occupants in person, or by posting the notice on the door of the house, etc. By the seventh section it is provided that, in the event of the refusal of such occupants of such houses to remove, the mayor is authorized to place a policeman at the door of such premises to warn away all parties who shall undertake to enter. The eighth section provides for the punishment of these people who violate the provisions of the ordinance, or who disturb the tranquility of the neighborhood, by fine, to be imposed by the recorder of the city. R., pp. 6 and 7.

By a subsequent ordinance, No. 13,485, C. S., the limits designated where changed. R., p. 5.

George Lhote, whose residence is situated within the new limits thus designated for lewd women, and in the square bounded by St. Louis, Franklin, Tremé and Toulouse streets, second district of New Orleans, sued out a writ of injunction in the Civil District Court for the Parish of Orleans, Louisiana, to prevent the execution of the ordinances, above referred to. Among other things, he averred "that the enforcement of said ordinances in the manner provided therein, violates the Constitution of the United States and the laws of this State, in that they deprive petitioner of his property without due process of law, and amount to a taking or damaging the property of petitioner for public purposes without just and adequate compensation being first paid. That said ordinances are illegal, unreasonable and oppressive, in that, if executed, they will render your petitioner's dwelling house, and those of his neighbors, unfit and unsuitable for the occupancy of their families, wives and children, and wholly valueless for the purposes for which they were constructed, and have heretofore been used." R., pp. 3 and 4.

The Church Extension Society of the Methodist Episcopal

Church filed its petition of intervention, averring that it is a corporation organized under the laws of the State of Pennsylvania, owning two lots of ground on which is situated a building occupied for church purposes, wherein a colored congregation, composed of some six hundred members, worship and assemble on each and every Sabbath, and on Tuesday and Friday evenings, as well as on other stated occasions. That besides the religious services conducted in said church, a Sunday school is organized and established, which is attended by one hundred and seventy children, who receive religious instructions and teachings. It joined the plaintiff in injunction, alleging that said ordinances violate the provision of the Constitution of the United States, and demanded that they be declared unconstitutional. R. p. 11, *et seq.* By a subsequent petition, the Church Extension Society more specifically enumerated the injury and damage to its property by the location of lewd and abandoned women in its vicinity. R. pp. 100 and 101.

In the Civil District Court for the Parish of Orleans judgment was rendered, perpetuating the injunction sued out by the plaintiff and dismissing the intervention of the Church Extension Society. The opinion of the court will be found in the record. R. pp. 107, 108 and 109.

From a judgment in favor of the plaintiff, the city of New Orleans appealed, and the intervenor, the Church Extension Society, also appealed to the Supreme Court of the State of Louisiana.

In the State Supreme Court, the case was argued and submitted on April 20, 1898, and held under advisement until Nober 21st, 1898, before it was decided.

The State Supreme Court, in its opinion, among other things, says:

"It does not, however, readily occur to the mind that confining houses of this character within certain limits by the appropriate ordinance, is violative of any of the constitutional guarantees invoked in the discussion before us." The opinion further

holds that, "to whatever extent, however, the right of private property may be deemed affected by this last ordinance, it must be borne in mind that it is a great power of government given to preseve the morals, health and lives of the community that requires the surrender of rights by the citizen, supposed to be exacted by this ordinance. To that police power all must yield obedience. As put in the text-books and enforced by all decisions: 'Every citizen holds his property subject to the proper exercise of the police power exerted either by the legislature or by the subordinate political corporations. It is settled that police laws and regulations, though they may disturb the enjoyment of individual rights, are not unconstitutional. They do not expropriate property for public use. If the individual sustains any injury it is deemed *damnum absque injuria*, or, in the theory of the law, the injury to the owner is deemed compensated by the public benefit the regulation is designed to subserve.'" R. p. 124, *et seq.*

The decree of the Supreme Court reversed the judgment of the lower court in favor of plaintiff, dissolved the injunction and dismissed his suit, and affirmed the judgment of the lower court dismissing the intervention, and granting the injunction issued on the prayer of the Church Extension Society of the Methodist Episcopal Church. R. p. 129.

A rehearing was applied for, which was refused, and, thereupon, the plaintiff, George Lhote, and the intervenor, the Church Extension Society of the Methodist Episcopal Church, sued out this writ of error, claiming rights protected and secured under the Constitution of the United States, especially the Fourteenth Amendment thereof.

They assign as error:

"1. That the court erred in holding that the Ordinances Nos. 13,032 and 13,485, Council Series, of the city of New Orleans, do not deprive plaintiff and intervenor of the equal protection of the law.

"2. The court erred in refusing to hold that the said ordinances and the power conferred upon the mayor of the city of New Orleans thereby was not due process of law.

"3. The court erred in holding that the said Ordinances Nos. 13,032 and 13,485, Council Series, of the city of New Orleans, did not deprive the plaintiff and intervenor of their property without due process of law.

"4. That the court erred in holding that said ordinances were enacted under the police power of the city of New Orleans and the injuries suffered by plaintiff and intervenor were *damnum absque injuria.*

"5. That the court erred in refusing to hold that the ordinances attacked make arbitrary and unjust discriminations against intervenors, who belong to the colored race.

"6. That the court erred in extending the police power of the city of New Orleans so as to violate rights guaranteed by the Constitution of the United States, the supreme law of the land.

"7. The court erred in refusing to hold that the Ordinances, 13,032 and 13,485, Council Series, of the city of New Orleans, violate the 14th amendment to the Constitution of the United States.

"8. That the court erred in rendering a decree and entering judgment herein in favor of defendants and against plaintiff and intervenor." See Record, pp. 133 and 134.

I.

The Fourteenth Amendment was primarily intended to secure the rights and the equality before the law of the colored race. The words of the amendment, it is true, are prohibitory, but they contain a necessary implication of a positive immunity, or right, most valuable to the colored race, the right to exemption from unfriendly legislation against them, exemption from legal discrimination, implying inferiority in civil society, lessening the security of their enjoyment of the rights which others enjoy, and discriminations which are steps towards reducing them to the condition of a subject race. Strauder vs. West Virginia, 100 U. S. 303.

An examination of the history of the causes which led to the adoption of those amendments and of the amendments themselves, demonstrates that the main purpose of all the three last amendments was the freedom of the African race, the security and perpetuation of that freedom, and their protection from the oppressions of the white men who had formerly held them in slavery. Slaughter House Case, 16 Wall. 36.

Now, it appears that the congregation composing the Church Extension Society, and the children attending the Sunday school in this church, within the limits established for lewd women by the ordinance in question, all belong to the colored race, and although the church is the property of a corporation, it has been held that the word "person" used in the Fourteenth Amendment includes a corporation. Santa Clara Co. vs. Southern Pacific Co., 118 U. S. 394.

(*a*) The ordinance in question denies to plaintiff and intervenor the equal protection of the laws; thus, the owner of property within the limits, can validly lease the same for purposes of prostitution.

By section one of the Ordinance No. 13,032, the prohibition to rent, lease or hire any house, building or room, is directed exclusively against persons outside of the limits specified in section one. Not only can the owners of the property within the limits lease their houses, rooms and buildings for immoral purposes, but under the decision rendered by the Supreme Court of Louisiana in Lyman vs. Townsend, 24 An. 525, they can enforce the payment of their rent. In that case the court held that:

"A person owning a house in the vicinity of New Orleans situated *within the limits* of the district where the keeping of houses of prostitution are allowed by the city, may lease his house for that purpose and recover the rent from the lessee. In such a case, the lessee cannot be permitted to plead the immorality of her own calling as a shield against the payment of the rent of the property which she has used."

Whereas, the property owner beyond the limits cannot make or enforce any such contract.

(*b*) Outside of the limits designated for lewd women the keeping of houses of prostitution is forbidden under severe penalties, whereas within the limits the lewd and abandoned can ply their vocation with impunity. See State of Louisiana vs. Mack, 41 An. 1079. In other words, it is made a penal offense for pros-

titutes "to live, move or have their being" outside of the limits assigned, while within this "charmed circle" they can ply their nefarious vocation *ad libitum*

II.

The powers conferred upon the mayor by this ordinance are of the most extraordinary character. They cannot be called "due process of law," for they authorize him to act, direct prostitutes to remove within a delay of five days, close up the house, building or room, and place a policeman at the door of such premises to warn away all parties who undertake to enter.

The State of California attempted under her so-called "police power" to exclude lewd and debauched women from being brought into the State by vessels coming from any foreign port, and directed the Commissioner of Immigration to exclude such women unless the captain of the vessel gave a bond of $500.00, that such passenger should not become a public charge, or is a convicted criminal or is a lewd and debauched women. This Court did not hesitate to declare this statute a violation of the Federal Constitution. Chy Lung vs. Freeman, 92 U. S. 275.

The extraordinary powers conferred upon the mayor by the ordinance in question is not "due process of law."

"Due process of law requires an orderly proceeding adapted to the nature of the case, in which the citizen has an opportunity to be heard, and to defend, enforce and protect his rights. A hearing or an opportunity to be heard is absolutely essential."

Black's Constitutional Law, p. 481, § 212.

In Pennoyer vs. Neff, 95 U. S. 715, this Court say the term "due process of law," when applied to judicial proceedings, means a course of legal proceedings, according to those rules and principles which have been established by our jurisprudence for the protection and enforcement of private rights. To give such proceedings any validity there must be a competent tribunal to pass upon the subject-matter.

Here, the poor prostitute is not given a hearing or allowed

a trial, but is turned over to the tender mercies of the mayor and his band of janizaries—the police—to be disposed of as, in their judgment, they may see fit. Nor are owners of property within the limits for lewd women in any better condition. Their property is taken without due process of law.

"The constitutional guaranty that no person shall be deprived of his property without due process of law, may be violated without the physical taking of the property for public or private use. Property may be destroyed, or its value may be annihilated; it is owned and kept for some useful purpose, and it has no value unless it can be used. Its capability for enjoyment and adaptability to some use and essential characteristics and attributes, without which property cannot be conceived, and hence any law which destroys it or its value, or takes away any of the essential attributes, deprives the owner of his property." Black's Constitutional Law, p. 484.

All of these extraordinary and unconstitutional proceedings are attempted to be justified upon the theory that every citizen holds his property subject to the proper exercise of the police power.

The Fourteenth Amendment to the Constitution of the United States provides: "Nor shall any State deprive any person of property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." To escape from the prohibitions contained in the provisions of the Federal Constitution, we are told that the city of New Orleans, acting as an agent of the State, *can*, under its indefinable police power, invade the sacred rights of property, render plaintiff's residence and intervenor's church totally unfit for purposes for which they were erected, turn the plaintiff and his family out of their home, and the congregation of the church out of its sanctuary, by placing them within the limits where lewd women are compelled to dwell and ply their vocation.

We contend that the city of New Orleans, in dedicating the area prescribed in the ordinance for the residence of bawds and prostitutes, infringes plaintiff's and intervenor's rights of property.

"There may be a *taking* of property within the *spirit* as well as within the strict letter of the Constitution, where the injury is a mere result of the use of other property under a legislative grant. But I understand the rule to be, that when, by the use of adjoining property, for the purposes contemplated by the grant, the property of others is directly invaded by some physical agency that produces an actual physical invasion of the property over which it passes, or is sent, and thereby impairs the use of the property, that this is a *taking* of property which entitles the owner of the property injured to compensation, even if the invasion and damage is only occasional. But where the injury is a *remote* consequence of the act, and not a direct or necessary result, and does not operate as a physical interference with property, or impose upon it an onerous servitude, and only occurs at intervals, it is strictly consequential damage that cannot be the subject of an action."

Wood on the Law of Nuisances, section 595.

"If property in land consists in certain essential rights, and a physical interference with the land subverts one of those rights, such interference takes, '*pro tanto*,' the owner's property. The right of indefinite user is an essential quality or attribute of absolute property, without which absolute property can have no legal existence. Use is the real side of property." Eaton vs. Boston, Concord & Montreal Railroad, 51 N. H.

"As to the ownership of the soil of the street, the question is of no practical importance. The right of an owner of a lot in a town to the use of an adjoining street, *is as much property* as the lot itself, and the legislature can no more deprive a man of one than the other, without compensation." Lackland vs. R. R. Co., 31 Mo. 180.

"A municipal corporation is liable to indictment for a public nuisance maintained by it, and is also liable for damages at the suit of an individual who sustains a special damage therefrom. * * * If it neglects nuisances injurious to the health or morals of its citizens, which it has the power to remove, or if it permits any public nuisance to exist upon its property, it may be indicted and punished the same as an individual." Wood on Nuisances, section 743.

"When a municipal corporation has ample power to remove a nuisance that is injurious to the health (or morals), endangers the safety, or impairs the convenience of its citizens, or when, in the prosecution of a public work, it creates a nuisance, it is liable for all the injuries that result from a failure on its part to properly exercise the power possessed by it, and for injuries resulting from its wrongful acts." *Idem*, 744.

"It may not always be easy to determine what really amounts to a *taking* of property, but it is safe to say that, whenever the exercise of the right operates to destroy an easement incident to real property, or amounts to an actual physical invasion of property by some agency that produces injury thereto, or imposes a burden thereon, that is a taking of property. There need not be an exclusive appropriation of the property, but such an interference with the beneficial use thereof, as operates an essential abridgement of the owner's rights incident to, and an essential part of, the estate." *Idem*, 755.

In Pumpelly vs. Green Bay Co., 13 Wall., p. 166, this Court said:

"It is not necessary that property should be absolutely *taken*, in the narrowest sense of that word, to bring the case within the protection of this constitutional provision. There may be such serious interruption to the common and necessary use of property as will be equivalent to a *taking*, within the meaning of the Constitution."

III.

But it is said that the city exercises this peculiar governmental function by virtue of its unlimited, indefinable police power.

The police power does not extend to the supervision, regulation and inspection of prostitutes. The city of New Orleans has no lawful authority to regulate prostitution.

"Police supervision of prostitutes, so universal a custom in the European cities, is sometimes considered in the same light, but is essentially different. Prostitution is an offense against the law, and these city ordinances render lawful the pratice of authorizing its prosecution under certain limitations and restrictions, among which are police supervision and inspection. But the subjection to this control is voluntary on the part of the prostitutes, in order to render practices lawful which are otherwise unlawful. It is rather in the character of a license, under certain restraints, to commit an offense against public morality." Tiedman's Limitations of Police Power, p. 131, paragraph 49.

"The police power of the government cannot be brought into operation for the purpose of exacting obedience to the rules of morality and banishing vice and sin from the world." *Idem*, p. 150.

"It has been maintained in a previous section that police power does not extend to the punishment of vice. No law

can make vice a crime, unless it becomes, by its consequence, a trespass upon the rights of the public. But while this may be true, no man can claim the right to make a trade of vice. A business that panders to vice may and should be strenuously prohibited, if possible. Fornication is a most grievous and common vice. Under this view of all the limitations of police power, it would be commendable as well as permissible to prohibit the keeping of houses of ill-fame. * * * Vice as vice is not subject to police regulations, but a business may always be prohibited whose object is to furnish means for the indulgence of a vicious propensity or desire." *Idem*, p. 391, paragraph 105.

Fortunately for us, this court has put a limit even upon the police power exercised by a State, or a municipality created by it.

In the case of the New Orleans Gas Light Company vs. Louisiana Light Company, 115 U. S. 650, it was distinctly asserted that: "Definitions of the police power must, however, be taken subject to the condition that the State cannot, in its exercise, for any purpose whatever, encroach upon the powers of the general government, or rights granted or secured by the supreme law of the land;" and the court referred to the cases of Henderson & Co. vs. Mayor of New York, 92 U. S. 259; Chy Lung vs. Freeman, 92 U. S. 275; and R. R. vs. Husen, 95 U. S. 465.

"If a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution." Mulger vs. Kansas, 123 U. S. 661.

"The police power cannot be set up to control the inhibitions of the Federal Constitution, or the powers of the United States government created thereby." Walling vs. Michigan, 116 U. S. 446. See, also, Scott vs. Donald, 165 U. S. 58.

The State cannot under the exercise of its police power obstruct or interfere with foreign or interstate commerce, nor can it impair the obligation of contracts, nor deprive any one of his property without due process of law, nor deny to any one within its jurisdiction the equal protection of the laws.

IV.

The testimony is conclusive that the enforcement of this ordinance will disturb and render plaintiff's and intervenor's properties wholly unfit for the purposes for which they were erected. Worse than this, to recognize the right of the city to create an asylum for abandoned women, and to dedicate a portion of her territory for the residence of this class of people and to permit them to there ply their unholy vocation, is a violation of the principles of the Christian religion, which the Supreme Court of the United States say is the foundation of our government and the civilization which it has produced in the Western world.

"The organization of a community for the spread and practice of polygamy is, in a measure, a return to barbarism. It is contrary to the spirit of the Christianity and of the civilization of the Western world. The question, therefore, is whether the promotion of such a nefarious system and practice, so repugnant to our laws and to the principles of our civilization, is to be allowed to continue by the sanction of the government itself, and whether the funds accumulated for that purpose shall be restored to the same unlawful uses heretofore, to the detriment of the true interests of civil society." Mormon Church vs. United States, 136 U. S. 49.

"A house of ill-fame or bawdy house, as it is more commonly called in the law, is a public nuisance, and the keeper thereof may be indicted therefor whether the house is located in a city or a forest. It is *mala in se*, and the court does not need to be informed of its effects upon society, for the common experience of mankind shows that the proper and natural consequences of such an establishment will be detrimental to the morals and social welfare of the public." Wood on Nuisances, section 29.

"No nuisance, whose effect is merely moral, can be abated, except by the courts and by the courts only, by the administration of such punishment as will be likely to cause the parties to desist. It is very laudable on the part of the people, in any community, to desire to be rid of these moral pests, and the indignation experienced by them at the presence of such institutions in their midst is just; but they will not be justified in attempting to check the evil by any riotous or unlawful means." *Idem*, section 32.

In the cases of Ely vs. the Supervisors of Niagara Co., 36

N. Y. 297, and in Welch vs. Stowell, 2 Douglas (Mich.), 332, it was held that "individuals have not the right to abate a nuisance resulting from the keeping of a bawdy house by demolishing the buildings, or otherwise interfering therewith; that the remedy is by indictment."

We, therefore, seriously maintain: (1st) that the ordinance complained of denies to plaintiff and intervenor the equal protection of the laws. Immoral contracts and immoral persons are permitted in one portion of the city of New Orleans, and prohibited in the others (Yick Wo vs. Hopkins, 118 U. S. 356). (2d) The ordinance attacked makes arbitrary and unjust discriminations against intervenors, who belong to the colored race—their church, and their church alone is subjected to the contamination of lewdness and immorality, while all the white churches in the city are exempted from such burdens. (3d) It gives to the mayor and police extraordinary powers to arrest and condemn without hearing or trial. (4th) It deprives plaintiff and intervenor of their property, by destroying the use for which they were constructed, "without compensation" and without "due process of law." (5th) It authorizes the city of New Orleans to license, create and maintain public brothels within the area designated, and denies to plaintiff and intervenor the right to have such nuisances removed or abated, by the preventive writ of injunction. High on Injunctions, § 782; Hamilton vs. Whitridge, 11 Md. 128. (6th) It extends the *police power*, so as to violate rights guaranteed or secured by the Constitution of the United States—the supreme law of the land. (7th) Instead of prohibiting and suppressing, it tolerates and regulates vice.

Respectfully submitted,

E. HOWARD McCALEB.

Office Supreme Court U. S.
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JAMES H. MCKENNEY,

No. 705, 204

Brf. of McLoughlin & Gilmore for Pl'ff in Error

Miller for D.E. (mo.)

Supreme Court of the United States.

OCTOBER TERM, 1898.

Filed Feb. 20, 1899.

No. 705.

GEORGE L'HOTE ET AL., PLAINTIFFS IN ERROR,

versus

CITY OF NEW ORLEANS, DEFENDANT IN ERROR.

Brief for Defendant in Error on Motion to Dismiss or Affirm.

JAMES J. McLOUGHLIN,
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City Attorney, Counsel for City of New Orleans, Defendant in Error.

BRANCH K. MILLER,
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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 2-20-'99

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1898.

No. 705.

GEORGE L'HOTE ET AL., PLAINTIFFS IN ERROR,

versus

CITY OF NEW ORLEANS, DEFENDANT IN ERROR.

Brief for Defendant in Error on Motion to Dismiss or Affirm.

Plaintiff in error, L'Hote, who was plaintiff in the court below, enjoined the execution of an ordinance of the city of New Orleans, fixing the limits within which houses of prostitution could be lawfully conducted, and also designating the limits within which the same could be maintained. His interest in bringing the suit was to protect from impairment in value certain real estate belonging to him, situated in the territory within which the ordinance permitted such establishments to be conducted. His complaint was that the maintenance of the latter in the neighborhood of his property would constitute a public nuisance, causing him pecuniary injury, and against which he was entitled to

relief by injunction, prohibiting the enforcement of the ordinance.

The grounds assigned for the nullity of the latter were that it was unconstitutional, unreasonable, and oppressive. The unconstutionality was averred to consist of its violation of the Constitution of the United States and that of the State of Louisiana, in that it deprived plaintiff of his property without due process of law, and amounted to a taking or damaging of his property for public purposes without just compensation being first made.

The judgment of the supreme court of Louisiana, sustaining the legality and constitutionality of the ordinance, proceeded upon the ground that the same was within the ordinary and usual power of police vested in all municipal corporations, and particularly the power expressly conferred upon the city of New Orleans by its charter. This latter act No. 45 of the General Assembly of the State of Louisiana of its session of 1896, particularly paragraph 2 of section 14 thereof and paragraph 11 of section 15, gives the city council express power to suppress all nuisances and to regulate houses of public prostitution and assignation, and to close the said houses from certain limits.

Where, on a writ of error to the supreme court of a State, the action upon which the jurisdiction of this court depends is so manifestly right that the case ought not to be held for further argument, while a motion to dismiss will be denied, one to affirm will be granted.

Arrowsmith *vs.* Harmoning, 118 U. S., 194.
Church *vs.* Kelsey, 121 U. S., 283.

It may be well doubted whether the application for the writ of error in this case, if made to this court or to the Chief Justice or an associate justice thereof, would have been granted, the practice being to deny the writ, when it appears on the face of the record that the decision of the

Federal question which is complained of was so plainly right as not to require further argument.

In re Kemmler, 136 U. S., 436.

Spies *vs.* Illinois, 123 U. S., 131–164.

It is not unreasonable to assume that in the granting of the order for the writ of error herein the presiding justice of the supreme court of Louisiana was moved by a commendable reluctance to retard plaintiffs in error in submitting to this court the complaint that they had been deprived of a Federal right by the judgment of the State supreme court.

That the adoption of ordinances regulating bawdy-houses is within the undoubted police power of a municipality is well settled by the weight of authority can, in no respect, be considered as open to discussion.

The Federal Constitution, broad and comprehensive as it is, was not designed in any respect to interfere with the power of a State, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education, and good order of the people.

Barbier *vs.* Connolly, 113 U. S., 31.

Ordinances to regulate and confine the prosecution of business, even lawful and not immoral in character, within certain definite territorial limits have been held by this court as being purely police regulations, within the competency of a municipality possessed of ordinary powers.

Barbies *vs.* Connoly, 113 U. S., 27.

Soon Hing *vs.* Crowley, 113 U. S., 797.

In a matter so closely connected with the public morals as the regulation of houses of prostitution, it would hardly seem necessary to adduce reasons or cite authority to maintain that their confinement to certain prescribed limits, in the judgment of the municipal authorities best calculated to

mitigate their evil effects, is obviously included within the ordinary powers of a municipal corporation.

In Louisiana the power to suppress such establishments has been held free from constitutional objection.

City *vs.* Roos, 35 La. An. Rep., 1011.

There is no room for doubt that this court, after an examination of the present record, will reach no other conclusion than that there is no semblance of error in the judgment from which the writ of error is taken; if this be true, the taking of the writ can be explained only on the theory that it was taken for delay. The present motion is designed to relieve the city from the effect of an injunction against the enforcement of an ordinance, which for nearly two years has prevented the execution of a police ordinance, of the legality and constitutionality of which there can be no question.

Respectfully submitted.

JAMES J. McLOUGHLIN,
Assistant City Attorney.

SAM'L L. GILMORE,
City Attorney, Counsel for City of New Orleans, Defendant in Error.

BRANCH K. MILLER,
Of Counsel.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

Filed Mar. 19, 1900.

No. 205.

GEORGE LHOTE AND THE CHURCH EXTENSION SOCIETY OF THE METHODIST EPISCOPAL CHURCH,

Plaintiffs in Error.

vs.

THE CITY OF NEW ORLEANS, ET AL.,

Defendants in Error.

In Error to the Supreme Court of the State of Louisiana.

BRIEF FOR DEFENDANTS IN ERROR.

JAMES J. McLOUGHLIN,
Assistant City Attorney,

SAM'L L. GILMORE,
City Attorney.

(17,290.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 204.

GEORGE L'HOTE AND THE CHURCH EXTENSION SOCIETY OF THE METHODIST EPISCOPAL CHURCH,

Plaintiffs in Error,

versus

THE CITY OF NEW ORLEANS, ET AL.,

Defendants in Error.

In Error to the Supreme Court of the State of Louisiana.

BRIEF FOR DEFENDANTS IN ERROR.

This case comes to this Court by a writ of error to the Supreme Court of the State of Louisiana. The facts of the case are as follows:—

STATEMENT OF THE CASE.

In the year 1857 the Common Council of the City of New Orleans passed Ordinance No. 3267, O. S., and Ordinance No.

3428, O. S., fixing the limits outside of which it was illegal for lewd women to live. Subsequent amendments were made by Ordinance No. 6302, O. S. The limits or districts, defined by these ordinances are marked upon the maps in the transcript, pages 114 and 122.

These ordinances remained in force until the year 1890, when Ordinance 4434, C. S., was passed, changing the limits, but otherwise being substantially the same as the ordinances enacted thirty-three years before.

This ordinance is printed at the end of this brief. It was not copied in the transcript, because of agreement between counsel (see page 16, transcript).

In January, 1897, the Council passed Ordinance 13,032, C. S., (printed on pages 6 and 7 of the transcript), by which a large portion of the district covered by Ordinance 4434 was excluded from the limits.

In July, 1897, Ordinance No. 13,485, C. S. (printed on page 5 of the transcript), was passed, which extended the limits, authorized by Ordinance 13,032, C. S., so as to include St. Louis street within the territory outside of which lewd women were excluded.

It will be noted that none of these ordinances compelled or authorized lewd women to live *within* certain limits of the city; they simply prohibited them from living *outside of* certain limits.

In order that the Court may more clearly understand the question, we ask your Honors' attention to the maps printed in the transcript on pages 114 and 122. From this you see that, in 1857, a very large portion of the City of New Orleans was within limits outside of which lewd women could not live.

As the City grew, it became necessary to change the boundaries of the district, and in 1890, Ordinance 4434 was adopted. This ordinance excluded such women from all that part of the City outside of a district bounded by Poydras, St. Louis, Claiborne and the river; excluding, however, Canal, Rampart, St. Louis and Conti streets.

Under this state of affairs these women frequented a very large part of the city, extending, as the map shows, from the river to Claiborne street and from Poydras to St. Louis street. By the year 1897, because of the growth and progress of the city, it happened that this included a very valuable and populous section; it included a neighborhood filled with stores, churches, public schools, etc. The City Council, considering these facts, in 1897, passed Ordinance 13,032, C. S., which curtailed these limits by excluding all that part of the city in the old limits, which was between Basin street and the river.

In other words, they simply took the limits defined by the old ordinances and declared that hereafter lewd women should not live within that part of the old limits bounded by Basin street, the river, Poydras and St. Louis streets.

A short time afterward, finding that St. Louis street was practically abandoned to this class of people, and had been for some years past (which we may consider the evidence in the transcript proves conclusively), they passed Ordinance 13,485, C. S., by which the limits were changed so as to include St. Louis street. Ordinance 13,485 was promulgated July 7, 1897.

On September 22, 1897, George Lhote, a respectable and well known citizen, representing himself to be a property owner on Treme (or N. Liberty, as printed on the maps) street, near St. Louis street, but outside of the limits included by

the ordinance, presented a petition to the Court, stating that he lived near St. Louis street, and that his neighborhood was a virtuous one, and that the city had adopted an Ordinance 13,485, amendatory of Ordinance 13,032, whose natural result would be to allow lewd women to live within a half square of his house; and further, that such neighbors would annoy him and would depreciate the value of his property, and would force him and his virtuous neghbors to leave the locality, where they had lived for so many years.

Further, Mr. Lhote states that the Common Council of the city, having previously designated the limits within which such women should live, had thereby exhausted whatever power the Council had in the matter and were without legal right to change, alter or modify the same; he further says that there was no good and sufficient reason for the enactment of said ordinance, or for the changing of the limits previously existing and established; and he asks that this Ordinance 13,032, as amended by 13,485, be declared null and void—the prayer of his petition being as follows: (See transcript, page —)

"Wherefore petitioner prays, the annexed bond and affidavit considered, that a writ of injunction do issue herein, directed to the city of New Orleans, through its Mayor and D. S. Gaster, Superintendent of Police, enjoining, restraining and prohibiting said city, its officers, agents, representatives and employees, and the said Superintendent of Police, and each of them, from in any manner enforcing or attempting to enforce said Ordinance No. 13,032, C. S., as amended by Sec. 1 of Ordinance No. 13,485, C. S. That said city of New Orleans, through its Mayor and D. S. Gaster, Superintendent of Police, be severally cited to appear and answer this petition, and that after due proceed-

ings said injunction be maintained and perpetuated, and said ordinance be declared unconstitutional, illegal, unreasonable, and as such null and void and without any legal force, validity or effect whatsoever."

On his petition an injunction issued *ex parte*, enjoining the Mayor and Chief of Police "from in any manner enforcing or attempting to enforce Ordinance No. 13,032, C. S., as amended by Sec. 1 of Ordinance No. 13,485, C. S."

The Supreme Court of Louisiana gave judgment in favor of the city of New Orleans, against both plaintiffs, L'Hote and the Methodist Church Extension Society, on the grounds stated in the opinion which is found at page 125 of the transcript:

"The regulation of houses of prostitution would seem to be so clearly connected with public order and decency, the policy announced by the ordinance has been so long exerted in all large cities of our country, and the power has had such frequent recognition in the charters of this city that it would seem the power itself cannot be successfully controverted."

Argument.

The assignments of error filed by the plaintiffs are found on pages 133 and 134 of the transcript, and are eight in number.

I.

The first assignment of error is, "that the Court erred in holding that Ordinances Nos. 13,032 and 13,485, C. S., do not deprive plaintiff and intervenor of the equal protection of the law."

Where the equal protection of the law comes in here, we are at a loss to see. These ordinances simply say that lewd and abandoned women shall not live outside of certain parts of the

city of New Orleans. One of the plaintiffs in error lives outside of these "limits", and the other plaintiff in error is a Methodist Church Society, domiciled in Philadelphia, which has a Chapel located within those "limits". Where on earth these plaintiffs can find any reason for concluding that an ordinance prohibiting lewd women from living beyond certain "limits" deprives these plaintiffs of the full protection of the law we fail to see. This point was not argued in the Court below, and counsel for defendants in error are unable to understand the application of this so called error in this case.

II.

The second error assigned is "that the Court erred in refusing to hold that the said ordinances and the power conferred upon the Mayor of the city of New Orleans thereby were not due process of law". The ordinances named, which are found on pages 5 and 6 of the transcript, speak for themselves. The power that they confer upon the Mayor is simply a power of supervision. This power of supervision consists in this; that whenever the Mayor finds any house to be dangerous to morals of the city of New Orleans, he can order the occupant to move therefrom within five days, and if such occupant fails to remove within the prescribed time, then an affidavit is made before a magistrate, and the question decided whether or not said occupant is violating the ordinance, and whether or not the house is dangerous to public morals; and if the Recorder finds these facts to be true, he inflicts a punishment upon the occupant. This finding of the Recorder is subject to an appeal to the Criminal District Court for the Parish of Orleans.

Louisiana Constitution of 1898, Article 139:—

"The Criminal District Court shall have appellate jurisdic-
" tion in all cases tried * * * before the Recorders' Courts
" of New Orleans."

This method is surely "due process of law", giving the violator a trial in two different Courts, where witnesses can be heard, and a decision had whether or not the Mayor wisely or legally exercised his power.

III, IV AND VI.

The third, fourth and sixth errors assigned are, respectively, that the ordinances deprive plaintiffs of property without due process of law, that they are not a valid exercise of the police power, and that they violate rights guaranteed or secured by the Federal Constitution.

The plaintiffs in error evidently mean by the third assignment of error, that if the city of New Orleans, in fixing the "limits" outside of which lewd and abandoned women shall not live, should happen to fix the lines in some place where property owned by the plaintiffs is situated, that the proximity of that class of people would lessen the value of the property of plaintiffs, and that this deterioration would amount to a taking of property without due process of law.

In this connection we call the attention of the Court to the inconsistency of plaintiffs' demands.

The Methodist Church is situated on Bienville street in square No. 159 (see map, page 122). This particular square whereon this church is built has formed from time immemorial a portion of the district where lewd and abandoned women have been allowed to dwell. Before the church was built, these women were allowed to live in this section. See map, page 114 of the transcript.

It comes with ill-grace now from the Church Society to complain that an ordinance adopted in 1897, which is really a reiteration of an ordinance adopted in 1857, is null and void and to their prejudice, when they had moved in that neighborhood at a period when that particular spot was dedicated to the vicious element. In fact, their Chapel was evidently originally erected for missionary work amongst the class in whose midst it was established, and their existence is its only *raison d'etre.*

As to Mr. L'Hote, the other plaintiff, who joined this Church in the assignments of error, he lives outside of the "limits", at No. 522 Treme street (Treme being called N. Liberty street on the map in evidence), which is in square 153 of the map on page 122.

For 40 years Mr. L'Hote's residence had been just as close to the limits allotted to lewd women, but in 1894 the Council adopted Ordinance 4434, C. S., which changed the limits outside of which lewd women might dwell. By agreement of counsel the map found on page 115 of the transcript, correctly delineates the boundaries of the so called limits, and there your Honors will see that the lines of 4434, C. S., ran straight along St. Louis street from the river to N. Claiborne street, coming within one-half of a square of Mr. L'Hote's residence. It also comes with bad-grace from Mr. L'Hote, he having lived for so many years in a neighborhood whose characteristics are fully set forth in the transcript, and which section is no different under the contested ordinance from what it was under the ordinances which prevailed for fifty years, to come into Court and question the ordinance of 1897. For even if he succeeds in wiping out the ordinance of 1897 and under the same principle the ordinance of 1890, he will find that his residence will be similarly situated, with reference to this class of people.

But apart from this question of inconsistency, and apart from that fact that for many years the surroundings of Mr. L'Hote's residence and of the Church Chapel have been of the lowest describable in point of reputation, his house being one of the few respectable houses in the neighborhood, we must not say that if a city government should name a district within which lewd women can or cannot live, that such an act deprives people of their property without due process of law.

These poor creatures must live somewhere, and it surely lies within the discretion of the City Council to set apart certain districts for their occupancy, and having legally and honestly exercised that discretion the Court should hesitate to revise the Council's decision.

It is of course very probable that some one must suffer in the injury to his feelings, etc., but that is *damnum absque injuria*, to which some must submit in order that the whole population may benefit.

The police power of the city granted to her by the State in her various charters, gives her the right to regulate its lewd women.

Act 20 of 1882, Louisiana Legislature, Sec. 8, Clause 11:

"The Council shall have the power to regulate the police of theatres, * * * houses of prostitution and assignation, and to exclude such houses from certain limits, and shall have power to close the same, * * * and to authorize the Mayor and police to close such places."

The existing city charter is the Act of Louisiana Legislature Act 45 of 1896. Section 15, Clause 11 of that Act provides:—

"The Council shall have power, * * * to regulate the police of theatres, * * * houses of prostitution and assignation, and to close such houses in certain limits, and shall have

power to exclude the same, * * * and to authorize the Mayor and police to close such places."

The regulation of such houses and such women is essentially a police power of the city, and when the City Council, in the exercise of its discretion, enacts an ordinance, declaring that such people shall not live outside of certain limits, they have acted wisely in their discretion, and the courts will not interfere with them, as that would be substituting the discretion of the courts for the discretion of the Council, and that is certainly something that this Court will not sanction.

The City Council represents the entire body of citizens; they have at heart the best interests of the city; when they exercise this discretion legally, and set aside a portion of the city, outside of which lewd and abandoned women may not live, we think that such discretion should not be interfered with by the Court, unless it should be shown that it was done with unreasonableness or prejudice.

Now, what does the evidence in this case disclose? We find that in the district formerly set apart for such people, by Ordinance 4434, C. S., there are to-day nine churches, two schools and ten public buildings. That in the territory covered by Ordinance 13,485, there are only one church, one school and not one public building. The discretion of the City Council surely was correctly exercised, and on this comparative statement concerning the two districts, the new one is certainly the one where less harm can result.

Right here let us call to the attention of the Court that this district, which is called the "new district", is not now, for the first time, set apart for such purposes. It has always been a part of the district set aside for such purposes since 1890, when Ordinance 4434, C. S., was adopted.

Consequently, it does not follow that because a portion of the territory set apart in 1890 for lewd women is hereafter to be devoted exclusively to respectable people, that such action on the part of the City Council is to be considered as devoting for the first time the rest of that district to other uses.

Again, when we examine the testimony in the case we find witness after witness saying that the objection to such people leaving the front of the old district and moving into the back of the old district springs not from any yearning to improve the moral tone of the city, but rather from a selfish desire to keep rented to these characters the houses in the front of the old district, which the new ordinance forces them to abandon.

V.

The fifth assignment of error is, that the Court erred in not holding that the ordinances attacked make arbitrary and unjust discrimination against the Church Society, which, plaintiffs say, belongs to the colored race. This is another remarkable claim. How on earth an ordinance, which on its face simply prohibits prostitutes and lewd women from living outside of certain limits, can be considered a discrimination against a religious corporation that found a field of missionary labor in a portion of the city set aside for abandoned and lewd women, we cannot perceive.

There is no mention made in the ordinance of colored people or of churches for colored people. As we have said before, in our answer to the third, fourth and sixth errors assigned, it will be seen from the maps that the district which is set apart in the recent ordinances, has been embraced for years and years back by the district wherein lewd and abandoned women were con-

fined. That church is the only church in the district, there being only one public school (and that on the outskirts of the district)—and not a single public building within its limits.

In fact, if that class of people must live somewhere, no section of the city can be found, where they can be placed with less danger to the morals of the city, than the district described on page six of the transcript.

There can be no discrimination against the colored church by an ordinance prohibiting prostitutes from living in certain sections of the city of New Orleans. Mr. L'Hote, the other plaintiff, is a white man. How can a white man and a Philadelphia corporation combine in a plea that this same ordinance discriminates against the colored race? There is no question of race, color or previous condition in this case. It is simply and purely a reasonable exercise of the police power of the city of New Orleans.

VII.

The seventh assignment of error is, that this ordinance violates the fourteenth amendment to the Constitution of the United Sates. We presume by this is meant, a violation of section one of that 14th amendment, being that part of it which reads:—

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor deprive any person of life, liberty, or property, without due process of law."

The preservation of the public morals, is one of the duties of a municipal corporation, which call for the exercise of the police power, and where, as in this case, the police power of the State is

used for the purpose of suppressing vice, and of excluding bawdy houses from certain limits, and confining houses of prostitution and ill-fame to certain parts of a city, such exercise will never be construed as a violation of the Fourteenth Amendment.

"Every citizen holds his property subject to the proper exercise of the police power, exercised either by the Legislature or some subordinate political corporation.

"It is settled that police laws and regulations are not unconstitutional, even though they may disturb the enjoyment of individual rights. If the individual suffers any injury, it is deemed *damnus absque injuria*, or, in the theory of the law, the injury to the owner is deemed compensated by the public benefit the regulation is designed to subserve."

1st Dillon on Municipal Corporations, p. 93.

1st Dillon, Section 310.

Black's Constitutional Law, page 310.

Dwarris on Statutes, p. 455.

That the adoption of ordinances regulating bawdy-houses is within the undoubted police power of a municipality is well settled by the weight of authority can, in no respect, be considered as open to discussion.

The Federal Constitution, broad and comprehensive as it is, was not designed in any respect to interfere with the power of a State, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education, and good order of the people.

Barbier vs. Connolly, 113 U. S., 31.

Ordinances to regulate and confine the prosecution of business, even lawful and not immoral in character, within certain definite territorial limits have been held by this Court as being

purely police regulations, within the competency of a municipality possessed of ordinary powers.

Barbier vs. Connolly, 113 U. S., 27.

Soon Hing vs. Crowley, 113 U. S., 797.

In a matter so closely connected with the public morals as the regulation of houses of prostitution, it would hardly seem necessary to adduce reasons or cite authority to maintain that their confinement to certain prescribed limits, in the judgment of the municipal authorities best calculated to mitigate their evil effects, is obviously included within the ordinary powers of a municipal corporation.

State vs. Karstendeik (La.), 39 Lawyers' Reports, Annotated, 521.

In Louisiana the power to suppress such establishments has been held free from constitutional objection.

City vs. Roos, 35 La. An. Rep., 1011.

There can be no merit in the seventh assignment of error, for the ordinances in question are surely a legitimate exercise of the police power for the protection of the public health and morals, and as such do not violate the Federal Constitution.

VIII.

The eighth assignment of error, that the Court erred in rendering judgment in favor of defendants, is fully disposed of by the consideration of the arguments relative to the other errors assigned.

We respectfully submit that the opinion and decree of the Supreme Court of the State of Louisiana are correct and should be affirmed.

Respectfully submitted,

JAMES J. McLOUGHLIN,

Assistant City Attorney.

SAM'L L. GILMORE,

City Attorney.

For Defendants in Error.

APPENDIX.

Ordinance 4434, Council Series, Adopted April 15th, 1890.

Be it ordained by the Common Council of the city of New Orleans, Sec. 1:

Section 1. That public prostitutes or notoriously lewd and abandoned women are forbidden to stand upon the sidewalks in front of or near the premises they may occupy, door or gate of such premises, or to occupy the steps thereof, or to accost, call or stop any person passing by, or to walk up and down sidewalks, or to stroll about the city streets indecently attired, or in other respects so to behave in public as to occasion scandal or disturb and offend the peace and good morals of the people.

Section 2. That it shall not be lawful for any lewd woman to frequent any cabaret or coffee house or to drink therein.

Section 3. That all houses, buildings or rooms occupied or inhabited by lewd women, and all houses of prostitution and of assignation, shall at all times be subject to the visitation of the police, and it shall be the duty of the police, while strictly enforcing the provisions of this ordinance, to extend to such lewd and abandoned women the same protection given to other inhabitants of this city.

Section 4. That it shall not be lawful for any public prostitute or woman notoriously abandoned to lewdness to occupy, inhabit, live or sleep in any house, room or closet situated without the following limits, and that said women are excluded from any other portion of the city outside of the limits now specified, viz.: South side of Poydras street from the Mississippi river to Claiborne street, west side of Claiborne street from Poydras to St. Louis street, north side of St. Louis street from

Claiborne street to the river, and along the river bank from St. Louis to Poydras street; provided, that nothing herein shall be so construed as to give the right to any lewd women to occupy a house, etc., as herein provided, in any particular portion of the city.

SECTION 5. That it shall not be lawful for any public prostitute notoriously abandoned to lewdness to occupy, inhabit, live or sleep in any one story house, or a room or closet of the first or lower story of any house in the city of New Orleans outside of the limits specified in section 4 of this ordinance.

SECTION 6. That it shall not be lawful to establish or carry on a house of prostitution or assignation within the limits specified in section 4 of this ordinance.

SECTION 7. That any person, whether agent or owner, who shall knowingly rent or hire, or continue to rent or hire, after being notified by the Mayor that he or she is acting in contravention of this ordinance, any house, building or room to any woman or girl notoriously abandoned to lewdness, shall be brought before the Recorder of the District in which the offence is committed and punished as provided in section 10 of this ordinance.

SECTION 8. That wherever a house of prostitution or assignation, within or without the limits established by this ordinance, may become dangerous to the public morals, either from the manner in which it is conducted or the character of the neighborhood in which it is situated, the Mayor may, on such facts coming to his knowledge, order the occupant of such house, building or room, to remove therefrom within a delay of five days, by service of notice on such occupants in person, or by posting the notice on the door of the house, building or room, to

remove therefrom, within a delay of five days, and upon such occupants failing to do so, each shall be punished as provided in section 10 of this ordinance.

SECTION 9. That in the event that the occupants of such house, building, or room, referred to in section 8, do not remove therefrom after the infliction of the penalty, the Mayor is authorized to close the same and to place a policeman at the door of such premises to ward away all such parties who shall undertake to enter.

SECTION 10. That any person or persons who shall violate the provisions of this ordinance or who shall disturb the tranquility of the neighborhood, or commit a breach of the peace, shall be subject to a fine not exceeding $25, to be imposed by the Recorder of the District in which the offence shall be committed and in default of payment of the fine, to imprisonment in the Parish Prison for a term not exceeding thirty days.

SECTION 11. That each day any person shall continue to violate the provisions of this ordinance shall constitute a separate offence.

SECTION 12. That Ordinances 3267, O. S.; 3428, O. S.; 7141, A. S.; 7325, A. S.; and 2051, C. S., on the same subject as this ordinance be repealed.

SECTION 13. That nothing in this ordinance shall be taken to affect or repeal Ordinance 4101, C. S., relative to prostitutes on Canal street, or Ordinance 3430, C. S., relative to prostitutes in the Fifth District, nor to allow prostitutes to occupy, inhabit, live or sleep in any house, room or closet, situated on the following streets, viz.: Rampart, St. Louis and Conti streets.

secured by the Constitution of the United States, the action of a State in such respect is beyond question in the Federal courts.

The settled rule of this court is that the mere fact of pecuniary injury does not warrant the overthrow of legislation of a police character.

By ordinance No. 13,032, council series, approved January 29, 1897, it was ordained by the Common Council of the city of New Orleans:

"That from the first of October, 1897, it shall be unlawful for any public prostitute or woman notoriously abandoned to lewdness to occupy, inhabit, live or sleep in any house, room or closet situated without the following limits: South side of Custom House street from Basin to Robertson street, east side of Robertson street from Custom House to St. Louis street, south side of St. Louis street from Robertson to Basin street. Provided, That no lewd woman shall be permitted to occupy a house, room or closet on St. Louis street. Provided further, That nothing herein shall be so construed as to authorize any lewd woman to occupy a house, room or closet in any portion of the city. § 2. That it shall be unlawful for any person or persons, whether agent or owner, to rent, lease or hire any house, building or room to any woman or girl notoriously abandoned to lewdness or for immoral purposes outside the limits specified in section 1 of this ordinance. § 3. That public prostitutes or notoriously lewd and abandoned women are forbidden to stand upon the sidewalks in front of or near the premises they may occupy, or at the alleyway, door or gate of such premises, or to occupy the steps thereof, or to accost, call or stop any person passing by, or to walk up and down the sidewalks, or to stroll about the city streets indecently attired, or in other respects so to behave in public as to occasion scandal, or disturb and offend the peace and good morals of the people. § 4. That it shall not be lawful for any lewd women to frequent any cabaret or coffee house or bar room and to drink therein. § 5. That it shall be unlawful for any party or parties to establish or carry on a house of prostitution or assignation without the limits specified in section — of this ordinance. § 6. That wherever a house of prostitution or assignation within or without the limits established by this ordinance may become dangerous

to public morals, either from the manner in which it is conducted or the character of the neighborhood in which it is situated, the mayor may, on such facts coming to his knowledge, order the occupants of such house, building or room to remove therefrom within a delay of five days, by service of notice on such occupants in person, or by posting the notice on the door of the house, building or room, to remove therefrom within a delay of five days, and upon such occupants failing to do so, each shall be punished as provided in section — of this ordinance. § 7. That in the event that the occupants of such house, building or room referred to in section 6 do not remove therefrom after the infliction of the penalty, the mayor is authorized to close the same and to place a policeman at the door of such premises to warn away all such parties who shall undertake to enter. § 8. That any person or persons who shall violate the provisions of this ordinance, or who shall disturb the tranquillity of the neighborhood or commit a breach of the peace, shall be punished by the recorder having jurisdiction, for the first offence by a fine not exceeding $5.00, and in default of payment by imprisonment not exceeding ten days, for the second offence by a fine not exceeding $10.00, and in default of payment by imprisonment not exceeding twenty days, and for any subsequent offence by a fine not exceeding $25.00, and in default of payment by imprisonment not exceeding thirty days. § 9. That each day any person or persons shall continue to violate the provisions of this ordinance shall constitute a separate offence. § 10. That on and from the day this ordinance takes effect all ordinances in conflict therewith be and the same are hereby repealed, provided that nothing herein contained shall affect ordinance 12,456, C. S., relative to prostitutes in the fifth district."

By ordinance No. 13,485, council series of the city of New Orleans, approved July 7, 1897, it was ordained: "That section 1, of ordinance 13,032, C. S., be and the same is hereby amended as follows from and after the 1st of October, 1897, it shall be unlawful for any public prostitute or woman notoriously abandoned to lewdness to occupy, inhabit, live or sleep in any house, room or closet situate without the following limits,

viz.: 1. From the south side of Custom House street to the north side of St. Louis street, and from the lower or wood side of North Basin street to the lower or wood side of Robertson street. 2. And from the upper side of Perdido street to the lower side of Gravier street, and from the river side of Franklin street to the lower or wood side of Locust street, provided that nothing herein shall be so construed as to authorize any lewd woman to occupy a house, room or closet in any portion of the city. Be it further ordained, That section 1, of ordinance 13,032, C. S., as amended above, be and the same is hereby re-enacted."

The above ordinance being in force, the plaintiff in error George L'Hote, a resident, citizen and taxpayer of New Orleans, brought this action in the Civil District Court for the parish of Orleans against the city of New Orleans, its mayor and superintendent of police, on behalf of himself and all other persons similarly situated who might intervene and bear their proportion of costs and expenses. The object of the suit was to obtain a decree enjoining and prohibiting the defendants from in any manner enforcing ordinance No. 13,032 as amended by section 1 of ordinance No. 13,485.

The bill alleged that the plaintiff was the owner of property situated in the square bounded by St. Louis, Franklin, Treme and Toulouse streets in the second district of the city of New Orleans, and resided with his wife and children in that square at No. 522 Treme street; that the chief and principal way of approach to his residence, and for ingress and egress thereto, was in, through and from St. Louis street; that the locality in which he resided was at the commencement of the action and had always been used for private residences, schools, groceries and other mercantile establishments; that the people residing in that locality were then and had always been moral, virtuous, sober, law abiding and peaceable; that the locality referred to was not then and never had been dedicated to immoral purposes or used for dwelling places and as the refuge of public prostitutes, lewd and abandoned women and the necessary attendants thereof, drunkards, idle, vicious and disorderly persons, who gather around them to gratify their depraved appetites, and

who were regarded as dangerous to the peace and welfare of the community, their presence at any place being always a just cause of alarm and apprehension;

That the above ordinances were unconstitutional, illegal, unreasonable and oppressive, and would if executed work irreparable injury, wrong and damage to the plaintiff;

That the council in enacting those ordinances pretended to have acted under and by virtue of the power conferred upon them in section 15 of act No. 45, approved July 7, 1896, "to regulate the police of houses of prostitution and assignation and to close such houses in certain limits, and shall have the power to exclude the same, and to authorize the mayor and police to close said places;" and

That the enforcement of those ordinances in the manner provided for violated the provisions both of the Constitution of the United States and of the State, and would deprive the plaintiff of his property without due process of law, and amount to a taking or damaging of such property for public purposes without just and adequate compensation being first paid.

The bill further alleged that "the introduction of public prostitutes, women notoriously abandoned to lewdness, in said locality, authorizing them to occupy, inhabit, live and sleep in houses and rooms situated therein, will materially lessen and depreciate the value of your petitioner's property, render his dwelling and the dwelling of his neighbors similarly situated unfit for the occupancy of private families, destroy the morals, peace and good order of the neighborhood, drive out and turn away the law abiding, virtuous citizens and their families from said locality, and dedicate the same to public and private nuisances *per se*, contrary to law and good morals;"

That "the common council of the city of New Orleans had previously designated the limits within which prostitutes and women notoriously abandoned to lewdness should inhabit and live, and had thereby exhausted whatever power was vested in them by legislature of the State and were without legal right to alter, change or modify the same to the injury, detriment and damage of your petitioner and others residing in said locality, which said council have attempted to include within said

limits; that, having so exhausted the authority conferred upon them by the legislature, the said council was without power to capriciously change the limits previously established by them; that the avocations plied by public prostitutes and women notoriously abandoned to lewdness are *contra bonos mores*, and the said common council of the city of New Orleans have no right, power or authority to legalize the same and to permit such persons to reside in the said vicinity in which your petitioner and others dwell with their families;"

That "there was no good and sufficient reason for the enactment of said ordinance or the changing of the limits previously existing and established;"

That "said council, in enacting said ordinance No. 13,485, council series, eliminated and excluded a large area of the city which had been previously dedicated to the occupancy of lewd and abandoned women, to the detriment and injury of petitioner, by changing said limits so as to include St. Louis street in his locality;"

That the execution of the ordinances would render plaintiff's dwelling house and those of his neighbors unfit and unsuitable for the occupancy of their families, wives and children, and wholly valueless for the purposes for which they were constructed and had theretofore been used; and

That the plaintiff and others similarly situated would be compelled, if the ordinances were executed, to abandon and remove from their dwellings at great trouble, expense and annoyance, and that the enforcement of the ordinance would oppress, injure and seriously damage and incommode the plaintiff and all others similarly situated.

The plaintiff also averred that the ordinances if executed would deprive him and others similarly situated of the equal protection of the laws and be in violation equally of the Constitution and laws of the United States and of the State; that under the laws and ordinances of the city as they existed, he and all others similarly situated in the locality had the right to cause houses of prostitution and assignation to be suppressed as nuisances and the inmates arrested and forced to vacate and remove therefrom, and of that right the plaintiff had theretofore availed him-

self; and that the ordinances if executed would legalize such nuisance and take away the rights of citizens theretofore existing and vested in plaintiff and others residing in that locality.

After alleging that the enforcement of the ordinance would work irreparable damage and injury to him in the depreciation in value of his property, because it would cease to be a fit and proper place for the dwelling house of himself, his wife and children, and necessitate their abandonment of the same and removal from the locality, he prayed that the ordinances might be declared null and void.

The writ of injunction as prayed was directed to be issued.

The city of New Orleans, its Mayor and Superintendent of Police, pleaded that the court was without jurisdiction *ratione materiæ*.

Bernardo Gonzales Carbajal intervened by petition, and after alleging that he was the owner of certain improved property within the limits prescribed by the above ordinances, reiterated all the allegations of the petition of L'Hote so far as they related to his property, and averred that the enforcement of the ordinances would work great and irreparable injury to him and depreciate his property by rendering it unfit and unsuitable for dwelling houses. He united in the prayer that the ordinances be declared null and void.

The Church Extension Society of the Methodist Episcopal Church, a corporation chartered and organized under the laws of Pennsylvania, also intervened, and alleged that it was the owner of buildings and improvements within the above district which were used and occupied for church purposes; that a religious congregation known as the Union Chapel of the Methodist Episcopal Church assembled and worshiped therein on each and every Sabbath and on Tuesday and Friday evenings, as well as on other stated occasions; that besides the religious services conducted in that church a Sunday school was organized and established which was attended by 170 children, who received religious instruction and teaching, and that the membership of that congregation consisted of about 300 persons, while those worshiping in the church numbered about six hundred persons.

Statement of the Case.

The society reiterated all the allegations of the plaintiff's petition and alleged that if the ordinances were enforced the value of its property would be destroyed and the same would be unfit for the purposes for which it was erected and was now being used, enjoyed and occupied; that the threats to enforce the ordinances had already caused a portion of the congregation attending the church to cease from attending therein; that encouraged by the action of the city council of New Orleans in passing the ordinances a number of lewd and abandoned women had already taken up their abode and habitation in the vicinity of the church and were plying their vocation as prostitutes; and that a number of houses were then in progress of erection and construction which were intended to be used and kept as brothels and houses of prostitution, and other places had been leased and let for the purpose of carrying on liquor saloons and concert halls, for the purpose and with the intention of changing the hitherto respectable character of that neighborhood into a resort for vice and the establishment of nuisances *mala in se*.

After averring that the above ordinances were in violation of the Constitution of the United States and the constitution and laws of Louisiana, and that the city council had no right to destroy the value of the intervenor's property and render the neighborhood in which the same was located the resort of lewd and abandoned women, it united in the prayer of the plaintiff's petition that those ordinances be declared null and void.

The exceptions filed by the defendants to the petitions of the plaintiff and the intervenors having been overruled, the city of New Orleans and its Chief of Police filed an answer averring that the ordinances in question were legal and that their enforcement would be a lawful exercise of the power conferred upon the city, and especially a valid exercise of the power conferred upon it by act No. 45 of 1896.

The Civil District Court rendered judgment in favor of the plaintiff, but in favor of the city against the intervenors. From that judgment suspensive appeals were allowed and prosecuted by the city as well as by the Church Extension Society.

By the final judgment of the Supreme Court of Louisiana the

judgment of the Civil District Court in favor of the plaintiff was reversed, and the injunction obtained by him was dissolved and his suit dismissed, while the judgment dismissing the intervening petitions and dissolving the injunction granted on behalf of the intervenors was affirmed. 51 La. Ann. 93.

Mr. E. Howard McCaleb for plaintiffs in error.

Mr. James J. McLoughlin for defendant in error. *Mr. Samuel L. Gilmore* and *Mr. Branch K. Miller* were on his brief.

Mr. Justice Brewer, after stating the case, delivered the opinion of the court.

The question presented in this case is whether an ordinance of the city of New Orleans prescribing limits in that city, outside of which no woman of lewd character shall dwell, operates to deprive these plaintiffs in error of any right secured by the Constitution of the United States. It is well, in the first place, to look at the negative side and see what is not involved. No woman of that character is challenging its validity; there is no complaint by her that she is deprived of any personal rights, either as to the control of her life or the selection of an abiding place. She is not saying that she is denied the right to select a home where she may desire, or that her personal conduct is in any way interfered with. In brief, the persons named in the ordinance, and against whom its provisions are directed, do not question its validity.

In the second place, no person owning buildings outside of the prescribed limits is complaining that he is deprived of a possible tenant by virtue of the ordinance, or saying that the abridgment of her freedom of domicile operates to cut down the amount of his rents.

In the third place, it will be perceived that the ordinance does not attempt to give to persons of such character license to carry on their business in any way they see fit, or, indeed, to carry it on at all, or to conduct themselves in such a manner as to disturb the public peace within the prescribed limits. Clauses 3

and 4 of the first section of the ordinance are clearly designed to restrain any public manifestation of the vocation which these persons pursue and to keep so far as possible unseen from public gaze the character of their lives, while clauses 6, 7, 8 and 9 provide means for enforcing order and preventing disturbances of the peace.

The question, therefore, is simply whether one who may own or occupy property in or adjacent to the prescribed limits, whether occupied as a residence or for other purposes, can prevent the enforcement of such an ordinance on the ground that by it his rights under the Federal Constitution are invaded.

In this respect we premise by saying that one of the difficult social problems of the day is what shall be done in respect to those vocations which minister to and feed upon human weaknesses, appetites and passions. The management of these vocations comes directly within the scope of what is known as the police power. They affect directly the public health and morals. Their management becomes a matter of growing importance, especially in our larger cities, where from the very density of population the things which minister to vice tend to increase and multiply. It has been often said that the police power was not by the Federal Constitution transferred to the nation, but was reserved to the States, and that upon them rests the duty of so exercising it as to protect the public health and morals. While, of course, that power cannot be exercised by the States in any way to infringe upon the powers expressly granted to Congress, yet until there is some invasion of Congressional power or of private rights secured by the Constitution of the United States, the action of the States in this respect is beyond question in the courts of the nation. In *Barbier* v. *Connolly*, 113 U. S. 27, 31, it was said:

"But neither the amendment — broad and comprehensive as it is — nor any other amendment, was designed to interfere with the power of the State, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education and good order of the people."

See also *Railroad Company* v. *Husen*, 95 U. S. 465; *Beer Company* v. *Massachusetts*, 97 U. S. 25; *Patterson* v. *Kentucky*,

97 U. S. 501; *Fertilizing Company* v. *Hyde Park*, 97 U. S. 659; *Plumley* v. *Massachusetts*, 155 U. S. 461, and cases in the opinion.

Obviously, the regulation of houses of ill fame, legislation in respect to women of loose character, may involve one of three possibilities: First, absolute prohibition; second, full freedom in respect to place, coupled with rules of conduct; or, third, a restriction of the location of such houses to certain defined limits. Whatever course of conduct the legislature may adopt is in a general way conclusive upon all courts, state and Federal. It is no part of the judicial function to determine the wisdom or folly of a regulation by the legislative body in respect to matters of a police nature.

Now, this ordinance neither prohibits absolutely nor gives entire freedom to the vocation of these women. It attempts to confine their domicile, their lives, to certain territorial limits. Upon what ground shall it be adjudged that such restriction is unjustifiable; that it is an unwarranted exercise of the police power? Is the power to control and regulate limited only as to the matter of territory? May that not be one of the wisest and safest methods of dealing with the problem? At any rate, can the power to so regulate be denied? But given the power to limit the vocation of these persons to certain localities, and no one can question the legality of the location. The power to prescribe a limitation carries with it the power to discriminate against one citizen and in favor of another. Some must suffer by the establishment of any territorial boundaries. We do not question what is so earnestly said by counsel for plaintiffs in error in respect to the disagreeable results from the neighborhood of such houses and people; but if the power to prescribe territorial limits exists, the courts cannot say that the limits shall be other than those the legislative body prescribes. If these limits hurt the present plaintiffs in error, other limits would hurt others. But clearly the inquiry as to the reasonableness or propriety of the limits is a matter for legislative consideration, and cannot become the basis of judicial action. The ordinance is an attempt to protect a part of the citizens from the unpleasant consequences of such neighbors. Because the legislative

body is unable to protect all, must it be denied the power to protect any?

It is said that this operates to depreciate the pecuniary value of the property belonging to the plaintiffs in error, but a similar result would follow if other limits were prescribed, and therefore the power to prescribe limits could never be exercised, because, whatever the limits, it might operate to the pecuniary disadvantage of some property holders.

The truth is, that the exercise of the police power often works pecuniary injury, but the settled rule of this court is that the mere fact of pecuniary injury does not warrant the overthrow of legislation of a police character.

Among the cases in which this question has been presented may be noticed *Fertilizing Company* v. *Hyde Park*, *supra*, and *Mugler* v. *Kansas*, 123 U. S. 623. In the first of these cases an act of the General Assembly of the State of Illinois had authorized the fertilizing company to establish a plant for the purpose of converting dead animals into an agricultural fertilizer. In pursuance of this authority the company had built its factory outside the then limits of the city of Chicago and in a territory adjacent to which there was no population. As the years rolled by population gathered around the factory, and the character of the work carried on was such as to make it a nuisance to the neighborhood. The village of Hyde Park, which had grown up around the works of the company, passed an ordinance to suppress these works, and a bill was filed in the state court to restrain the enforcement of that ordinance. The Supreme Court of the State held the ordinance valid, and on error to this court that judgment was affirmed. Although there was a charter right to maintain these works, and although when established they were located in a territory in which there was no population, yet when population had gathered around them the police power of the State was held sufficient to stop their existence, and that without compensation to the owner. The pecuniary injury which directly resulted to the company from the stoppage of its works was held no bar to the police power of the State. In the other case Mugler had established a brewery in Kansas, when such an institution was authorized by the laws of the

State. The buildings and machinery were of little value except for the purpose of manufacturing beer. Yet when Kansas, in the exercise of its police power, determined that the manufacture of beer should cease, it was ruled by this court that the pecuniary loss to Mugler did not justify any restraint of the legislative acts prohibiting the manufacture of beer. Each individual holds his property subject to the ordinary and reasonable exercise of the police power, and the fact that its exercise may in a particular case work pecuniary injury was adjudged insufficient to stay the legislative action. It is true those cases involved pecuniary injury to the persons whose action was prohibited, but it cannot be that the police power of a State can be stayed because it works injury to one person, and not stayed if it works injury to another.

In 1 Dillon Mun. Corp. 4th ed. sec. 141, the rule is thus stated:

"Laws and ordinances relating to the comfort, health, convenience, good order and general welfare of the inhabitants are comprehensively styled 'Police Laws or Regulations.' It is well settled that laws and regulations of this character, though they may disturb the enjoyment of individual rights, are not unconstitutional, though no provision is made for compensation for such disturbances. They do not appropriate private property for public use, but simply regulate its use and enjoyment by the owner. If he suffers injury, it is either *damnum absque injuria*, or in the theory of the law, he is compensated for it by sharing in the general benefits which the regulations are intended and calculated to secure. The citizen owns his property absolutely, it is true; it cannot be taken from him for any private use whatever, without his consent, nor can it be taken for any public use without compensation; still he owns it subject to this restriction, namely, that it must be so used as not unreasonably to injure others, and that the sovereign authority may, by police regulations, so direct the use of it that it shall not prove pernicious to his neighbors, or the citizens generally."

The learned author, in these and accompanying sentences, is discussing the rule when legislative action operates directly upon the property of the complainant and where injuries al-

leged to result are the direct consequence of legislative action. If under such circumstances the individual has no cause of action, *a fortiori* must the same be true when the injuries are not direct but consequential, when his property is not directly touched by the legislative action but is affected in only an incidental and consequential way. Here the ordinance in no manner touched the property of the plaintiffs. It subjected that property to no burden, it cast no duty or restraint upon it, and only in an indirect way can it be said that its pecuniary value was affected by this ordinance. Who can say in advance that in proximity to their property any houses of the character indicated will be established, or that any persons of loose character will find near by a home? They may go to the other end of the named district. All that can be said is that by narrowing the limits within which such houses and people must be, the greater the probability of their near location. Even if any such establishment should be located in proximity, there is nothing in the ordinance to deny the ordinary right of the individual to restrain a private nuisance. Under these circumstances we are of the opinion that the ordinance in question is not one of which the plaintiffs in error can complain. The judgment of the Supreme Court of Louisiana is therefore

Affirmed.